



**Mshila v Nduli (Tribunal Case E101 of 2023)  
[2023] KEBPRT 707 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 707 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E101 OF 2023  
GAKUHI CHEGE, MEMBER  
OCTOBER 13, 2023**

**BETWEEN**

**LIGHT WORESHA MSHILA ..... APPLICANT**

**AND**

**JOEL MUNYITHA NDULI ..... TENANT**

**RULING**

1. The parties herein entered into a tenancy agreement dated 27<sup>th</sup> November 2020 in which the Respondent agreed to lease the Applicant's land for a period of Ten (10) years for purposes of building a church. The agreement was renewable every three (3) years and is annexed to the Respondent's replying affidavit of 9<sup>th</sup> June 2023 as exhibit "JMN-1".
2. Based on the said agreement, an issue arises as to whether this Tribunal has jurisdiction to adjudicate the dispute between the two parties under cap 301, Laws of Kenya pursuant to which it is created.
3. Section 2 of the said Act defines a controlled tenancy to mean:-
  - ".....tenancy of a shop, hotel or catering establishment-
  - a. Which has not been reduced into writing or
  - b. Which has been reduced into writing and which-
    - i. Is for period not exceeding five years or
    - ii. Contains provision for termination otherwise than for breach of covenant within five years from the commencement thereof or
    - iii. Relates to premises of a class specified under subsection (2) of this section.



4. The question which arises is whether a “church” is a business premises within the meaning and interpretation of the foregoing legal provision. In common parlance a church is a building used for public Christian worship. In my view therefore, a church cannot fit the description of a controlled tenancy as it is neither a shop, a hotel nor catering establishment.
5. Consequently, this Tribunal has no jurisdiction to adjudicate over the instant dispute as the same has been filed and litigated in the wrong forum. This is what was held by the court of appeal in the *locus classicus* case of *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* (1989) eKLR and in *Phoenix of E.A Assurance Co. Ltd v S.M. Thiga T/A Newspaper Service* (2019) eKLR.
6. As regards costs, I shall exercise my discretion under section 12(1) (k) of *cap 301*, Laws of Kenya to order each party to meet own costs as not even the Respondent raised the issue of jurisdiction.
7. In conclusion, the final orders which commend to me in this case are:-
  - a. The landlord’s complaint and application dated 18<sup>th</sup> April 2023 is struck out for want of jurisdiction.
  - b. Each party shall meet own costs of the suit.

**RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 13<sup>TH</sup> DAY OF OCTOBER 2023.**

**HON. GAKUHI CHEGE**

**FOR: CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of:

Landlord present in person

No appearance for the Tenant

