



**Theranira v Mwangi & 3 others (Tribunal Case E1059 of 2023)
[2024] KEBPRT 404 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 404 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1059 OF 2023
P KITUR, MEMBER
APRIL 19, 2024**

BETWEEN

FELIX MUTHURI THERANIRA TENANT

AND

MOSES MAINA MWANGI 1ST RESPONDENT

HENRY KIARIE 2ND RESPONDENT

CHABRIN AGENCY 3RD RESPONDENT

MORIS MUTURI 4TH RESPONDENT

RULING

A. Parties and Background

1. The 1st and 2nd Respondents are the Landlords being owners of the suit premises and leased the same to the Tenant herein.
2. The Landlords are represented by the firm of Waceke Thindigua & Company Advocates.
3. The Tenant appears in person.

B. The Dispute Background

4. The Landlords state that the suit premises house both commercial and residential units and that they have let out a one bedroom unit, being BOO3 to the Tenant.
5. It is the Landlords case that the Tenant took occupation in February 2023 after agreeing to terms that included payment of monthly rent at Kshs. 20,000/= and the payment of an equivalent of one month's rent in deposit, which the Tenant paid on 7th February 2023.



6. The Landlord further states that the Tenant started defaulting in his rent obligation and even when he made payments, they were never in the full amount.
7. The Tenant on his part claims that he has been paying the monthly rent without exception and that the Landlord intended to terminate the tenancy and to evict him without regard to the law.
8. It is this stated threat of eviction that necessitated the Tenant's action in filing the Complaint herein dated 27th October 2023 together with an Application of even date seeking among others, an injunction restraining the Landlords and their agents from forcibly evicting or dispossessing the Tenant of their suit premises.
9. In response, the Landlords filed a Replying Affidavit sworn on 21st November 2023 alongside a Notice of Preliminary objection of even date raising the following points of law;
 - i. That this Honourable Tribunal lacks Jurisdiction to hear and determine this suit as it offends the express provisions of Article 169 (1) (d) of *the Constitution* of Kenya, and Section 2(1) and 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 laws of Kenya Tribunal lacks Jurisdiction to determine the application for reasons that:
 - a) The suit premises is residential in nature and does not fall under section 2(1) and 12 of Cap 301 laws of Kenya
 - b) The tenant rented out the unit B003 for residential purposes only and has never used the unit as a shop or for business.
 - ii. That this suit as presented before this Honourable Tribunal is bad in law, vexatious, scandalous, frivolous, an abuse of the court process and incurably defective and incompetent.
 - iii. That the application and the reference being incompetently filed before this Court, should be dismissed.
10. Parties took directions and agreed to dispose of the Notice of Preliminary Objection by way of Written Submissions which were duly filed by both parties.
11. A site visit by a rent inspector was conducted on 12th January 2024 and an Inspection Report duly done, which report indicated that the premise was a one-bedroom unit where the Tenant lived together with his family as his residence.

C. List of Issues for Determination

12. Having given full consideration to the Preliminary Objection raised, the issue for determination is;
 - i. Whether this Tribunal has Jurisdiction to hear and determine the matter over residential property.

D. Analysis and Findings

13. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to down its tools where want of jurisdiction is deemed or assumed not to exist. In the case of Owners of the Motor Vessel 'Lillian' (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending



other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

14. The question therefore arising is whether there exists a tenancy relationship between the Tenant and the Landlords subject to the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
15. Vide the Inspection Report alluded to, it has been established that the suit premises are residential in nature.
16. The description above does not fall under what would be termed as a business premise within the meaning of the definitions of a shop, a hotel or a catering establishment as defined under Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, as follows;

“shop” means premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purpose of rendering services for money or money’s worth;

“hotel” means any premises in which accommodation or accommodation and meals are supplied or are available for supply to five or more adult persons in exchange for money or other valuable consideration;

“Catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises;

17. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of Pritam vs. Ratilal and Another Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

18. From the foregoing, the Tenancy herein having been over residential premises, the same does not fall within the ambit of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, which therefore ousts this tribunal’s jurisdiction to hear and determine the dispute.
19. I therefore proceed to order as follows;

E. Orders

- a. The Landlords’ Preliminary Objection is hereby upheld.
- b. The Tenant’s Complaint and Application are hereby struck out.
- c. Each party shall bear their own costs.
- d. File marked as closed.

HON P. KITUR



BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 19TH DAY OF APRIL 2024 IN THE ABSENCE OF THE TENANT AND MS. WACEKE THINDIGUA FOR THE LANDLORDS.

HON P. KITUR

BUSINESS PREMISES RENT TRIBUNAL

