



**Kiarie v Muruga Investment Limited (Tribunal Case E235 of 2024)
[2024] KEBPRT 530 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 530 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E235 OF 2024
A MUMA, MEMBER
APRIL 26, 2024**

BETWEEN

GLADYS NUNGARI KIARIE TENANT

AND

MURUGA INVESTMENT LIMITED LANDLORD

RULING

A. Parties And Their Representatives

1. The Applicant, Gladys Nungari Kiarie is the tenant of a portion of space on land parcel known as L.R. No. 5989/14 (the “suit premises”) for the business known as New Mash Electricals (the “Tenant”).
2. The firm of S.G. Wachira & Co. Advocates represents the Tenant in this matter
3. The Respondent, Muruga Investment Limited are the registered proprietors of the suit premises (the “Landlord”).
4. The firm of Wanyoike & Macharia Advocates represents the Landlord in this matter.

B. Background Of The Dispute

5. Through a Reference and an Application dated 16th February, 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders inter-alia: a temporary injunction restraining the Landlord from removing the Tenant’s items, preceding with any form of distress for rent or interfering with the Tenant’s quiet possession, an order directing the Landlord not to lock the Tenant’s premises and the OCS Kiambu police Station to ensure compliance of these orders.
6. Upon perusal of the Tenant’s Application, the Tribunal, on 20th February, 2024, issued the following Directions ex-parte; a temporary injunction restraining the Landlord from removing the Tenant’s



items, preceding with any form of distress for rent or interfering with the Tenant's quiet possession, an order directing the Landlord not to lock the Tenant's premises, the OCS Kiambu police Station to ensure compliance of these orders and the Tenant to file proof of payment of rent.

7. Vide a Letter dated 28th February, 2024, the Applicant's Advocates sought variation of the Direction issued to OCS Kiambu police station to compliance of the Tribunal's Directions issued on 20th February, 2024 as the suit premises was located in Runda and not in Kiambu Township.
8. Consequently, the Tribunal, on 1st March, 2024, issued the following Orders ex-parte: a temporary injunction restraining the Landlord from removing the Tenant's items, preceding with any form of distress for rent or interfering with the Tenant's quiet possession, an order directing the Landlord not to lock the Tenant's premises, the OCS Runda police Station to ensure compliance of these orders and the Tenant to file proof of payment of rent. Further, the Honourable Tribunal directed the Tenant's instant Application be heard on 18th March, 2024.
9. In response to the Tenant's Application dated 16th February, 2024, the Landlord filed a Notice of Preliminary Objection and a Replying Affidavit dated 15th March, 2024 in which it challenged this Honourable Tribunal's jurisdiction to hear and determine the suit matter.
10. Therefore, it is the Landlord's Notice of Preliminary Objection dated 29th February, 2024 which is subject of this Ruling.

C. Jurisdiction

11. The Jurisdiction of this Honourable Court has been contested by the Landlord vide a Notice of Preliminary Objection dated 29th February, 2024.
12. It is the Landlord's contention that the subject tenancy is not a controlled tenancy within the meaning provided under of Section 2 (1) the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#), Cap 301, Laws of Kenya.

D. Issues For Determination

13. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the sole issue for determination is:
 - i. Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.

E. Analysis And Findings

- i. Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.
14. This Honourable Tribunal has the duty to interrogate the question of jurisdiction and satisfy itself before making any further step in line with the celebrated case of Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited [1989] eKLR where the Court of Appeal held as follows:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it..."



15. It is key to note that a Tribunal cannot arrogate jurisdiction to itself as it can only exercise jurisdiction conferred to it by the Constitution or statute. This was stated by the Supreme Court in the celebrated case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR where the Court held that:
- “A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...”
16. To this regard, the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301, Laws of Kenya under Section 2 defines “controlled tenancy” as:
- “A tenancy of a shop, hotel or catering establishment:
- a. ...
 - b. Which has been reduced into writing and which:
 - i. is for a 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...” (emphasis added)
17. The Landlord’s Objection is hinged on the provision of Clause D(a) of the Lease Agreement dated 1st January, 2023 that sets out the term of Agreement as Five (5) years and Three (3) months from 1st January, 2023 to 31st March, 2028. As such, the Landlord’s contention is that the tenancy relationship between itself and the Tenant falls out of the jurisdiction of this Honourable Tribunal.
18. The Tenant, in response, relied on Clauses 1 (c) and 3 (a) of the said Lease Agreement which sets out determination clauses.
19. Section 2 (b) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act sets instances a tenancy may be deemed as controlled tenancy. A reading of the aforesaid provision reveals the use of the conjunctive “or” used to link the alternatives. This means that the definitions are disjunctive hence a party only needs to satisfy any one of definitions provided above for their tenancy to be deemed as controlled tenancy.
20. It is not in dispute that the term provided in the Agreement dated 1st January, 2023 exceeds the duration envisaged in Section 2 (b)(i) of Cap 301. Therefore, the matter to be determined by this Honourable Tribunal is whether the tenancy relationship between the parties satisfies the provision of Section 2(b) (ii) of Cap 301.
21. While this Honourable Tribunal appreciates that provision of Clauses 1 (c) provided in the said Agreement, it takes cognizance that Clause 3 (a) relied on by the Tenant to include termination on grounds of breach of a covenant of the Contract. Clause 3 (a) sets out default in paying rent and breach, non-performance or non-observance by the Lessee of any “covenants” (emphasis added) amongst other reasons for termination of the said Agreement.
22. Therefore, in my considered view, the said tenancy relationship between the parties does not satisfy the provision of what amounts to a controlled tenancy envisaged in Section 2 (b) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.



23. From the foregoing, this Honourable Tribunal has established that it does not have jurisdiction to hear and determine the present Application and Reference. As such, it must down its tools as was observed by the Court of Appeal in Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited (Supra) where it held that:

“...Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

F. Orders

24. In the upshot and having established that this Honourable Tribunal has no jurisdiction to hear and determine the present Application and Reference, the following orders shall abide;
- a. The Preliminary Objection dated 29th February, 2024 is hereby upheld.
 - b. The Tenant's Reference and Application dated 16th February, 2024 is hereby dismissed for lack of jurisdiction.
 - c. Each party shall bear their own costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 26th day of April 2024 in the presence of Andrew W for the Landlord.

No appearance for the Tenant.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

