



**Karitu v Kuria (Tribunal Case E591 of 2023)
[2024] KEBPRT 245 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 245 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E591 OF 2023
A MUMA, AG. CHAIR & J ROP, MEMBER
MARCH 13, 2024**

BETWEEN

MARY WANGARI KARITU APPLICANT

AND

MARY KURIA RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant, Mary Wangari Karitu, is the tenant of Kiosk on Plot No. 001 situated in Gatongora Road, Kamakis Area, Ruiru (hereinafter the “Tenant”)
2. The firm of W.J Maxwell & Associates Advocates represents the Applicants in this matter.
3. The Respondent, Mary Kuria, is the owner of the suit property (hereinafter the “Landlord”).
4. The firm of Kinuthia Wandaka & Co. Advocates represents the Landlord in the matter.

B. Background of the Dispute

5. The Applicant moved this Tribunal vide an Application dated 13th June 2023 under a Certificate of Urgency and seeking orders that the Tribunal issue an ex-parte Interim Temporary Injunction Order against the Respondent/Landlord, their agents, servants, employees, heirs or assigns restraining them from evicting, demolishing and/or interfering with the Tenant’s shop. The Tribunal granted the said Orders.
6. In a separate matter, the Landlord moved this Tribunal vide an Application dated 13th June 2023 seeking Orders that the Application be certified as urgent, that the Landlords be allowed to remove the chicken cage in front of the business premises, break into the Tenant’s business premises, gain access and let it to another Tenant under supervision of the O.C.S Gatongora Police Station.



7. Moreover, the Applicant urged the Tribunal to order that the Tenant hand over vacant possession of the suit premises to the Landlord and that the O.C.S Gatongora Police Station ensure compliance of these orders. The Tribunal granted these Orders on 26th July 2023 consequently closing the file.
8. Vide an Order dated 4th April 2023, files BPRT/E589 of 2023 and BPRT/E591 of 2023 were to be heard and determined together.

C. The Landlord's Claim

9. The Landlord avers that she is the lawful owner of the suit property situated at Gatongora Ward within Ruiru, Kiambu County.
10. The Landlord avers that the Application filed by the Tenant lacks merit and ought to be dismissed. This is based on the ground that a Landlord/ Tenant relationship does not exist as the Tenant vacated and deserted the premises since December 2022 without making any rent payment during that period thus lacking the locus standi to institute this suit.
11. Additionally, it is the Landlord's averment that the Tenant sold her business for goodwill of Kshs. 285,000 to the third party. The Landlord and the third party signed a Landlord-Tenant Agreement dated 10th January 2023, conferring the tenancy rights upon the third party.
12. Following this the third party dutifully paid a monthly rent of Kshs. 15,000 to the Landlord since the signing of the aforementioned agreement.

D. The Tenant's Claim

13. The Tenant avers that she has dutifully paid rent for the whole of the period she has been in occupation of the suit premises since January 2019 to December 2022.
14. In addition to this, the Tenant claims that she was hospitalized at around the time she stopped paying rent, being December 2022, and was not present at the suit premises from this time due to the aforesaid hospitalization.
15. The Tenant's primary business was the sale of locally reared chicken ('kuku kienyeji') which necessitated her to build a metal cage for the chicken due to the unsustainability of the rooms inside the suit premises for chicken storage, given their poor ventilation.
16. It is the Tenant's averment that during her tenancy she initiated a restructuring process due to potentially substantial health risks posed to her customers due to the suit premises' shortcomings such as poor drainage and sanitation facilities.
17. In March 2022, having incurred losses in her business, the Tenant found the need to downsize her business which prompted her to enlist Stella Ngendo Sahuyu (hereinafter "the third party") to incorporate her business to the Tenant's. The third party officially assumed tenancy in July 2022.
18. The Tenant claims that the third party and herself were longstanding friends of 10 years and they did not sign a written agreement based on the same. The Tenant also claims that according to the terms of their verbal agreement, the third party was responsible for compensating the Tenant for the costs associated with some improvements the Tenant made in the suit premises and improvements to be made on the flooring of the suit premises due to occurrences of floods which led her to incur substantial losses. This cost amounted to Kshs. 295,000 which the third party fully settled in three separate installments.



19. According to this agreement, the third party was also to pay a monthly rent of Kshs. 12,000 while the Tenant would pay Kshs. 3,000 amounting to Kshs. 15,000 which was the expected rent to be paid by the Tenant. The third party dutifully paid these monies to the Tenant who then forwarded it to the Landlord since the third party occupied the premises.
20. Moreover, the Tribunal ordered the OCS Karatina Police Station to ensure compliance by the Landlord/Respondent and provide the Applicants with security and ensure peace prevails. The Tribunal further ordered that the Applicant/Tenant pay the monthly rent before hearing and subsequently every month thereafter as agreed.
21. It is the Tenant's further averment that she has since obliged with the Order requiring her to pay monthly rent pending the hearing and determination of this Application.
22. The Tenant claims that the Landlord has since then failed and/or neglected to comply with the Court Orders having destroyed the modifications she had made at the shop. Additionally, the Tenant claims that the OCS failed to ensure compliance of the said Orders

E. Jurisdiction

23. The jurisdiction of this Tribunal has been disputed.

F. List of Issues for Determination

24. The issue that falls for determination is as follows;

Whether there exists a Landlord/Tenant relationship between the Applicant and the Respondent and as such whether the Tribunal has jurisdiction to determine this matter?

G. Analysis & Determination

25. The Reference filed by the Applicants raises a fundamental issue discussed herein below:
26. The *[Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#)*, Chapter 301 Laws of Kenya (the "Act") provides for the statutory establishment of the Business Premises Rent Tribunal. The limits of the jurisdiction exercisable by the Tribunal are also explicitly set out therein. Section 12 of *[the Act](#)* grants the Tribunal its jurisdiction and provides that;

A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

- a. to determine whether or not any tenancy is a controlled tenancy;
27. Section 2 defines a controlled tenancy as;
 - “a 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 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;”
28. It goes without saying, that for there to exist a controlled tenancy, in addition to the requirements provided in the Act above, there must be a clear Landlord and Tenant relationship which is clearly defined according to the terms of the tenancy agreement or implied from their conduct.
29. Section 2 of f Act defines a Tenant as;
- “in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant”
30. The Tenant is seeking goodwill compensation of Kshs. 500, 000 as well as damages for financial hardship and emotional anguish.
31. It is patently clear that these prayers extend beyond the jurisdiction of this Honourable Tribunal as conferred to it by Section 12 of the Landlord and Tenant Act, Cap. 301 as quoted above.
32. Moreover, the tenancy between the Landlord and the Tenant was ended since there exists a tenancy agreement between the Landlord and the third-party.
33. Therefore, it is my respectful and considered opinion that the matter before this Tribunal is thus, outside our jurisdiction.

H. Orders

34. The upshot is that the Tenant’s Reference and Application dated 13th June 2023 is hereby dismissed. No order as to costs.

HON A. MUMA - AG CHAIR/MEMBER

HON JACKSON ROP - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED AT NAIROBI BY HON A. MUMA THIS 13TH DAY OF MARCH 2024 IN THE ABSENCE OF THE PARTIES.

HON A. MUMA - AG CHAIR/MEMBER

HON JACKSON ROP - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

