



**Goitom v Wachira (Tribunal Case E404 of 2023)
[2023] KEBPRT 705 (KLR) (Civ) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 705 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E404 OF 2023
GAKUHI CHEGE, MEMBER
SEPTEMBER 19, 2023**

BETWEEN

YEMANE GOITOM TENANT

AND

MOSES WACHIRA RESPONDENT

RULING

1. I wish to commence this ruling by citing the locus classicus case of *Owners of Motor Vessel "Lillian S" v Caltex Oil (k) Ltd* [1989] eKLR at page 8-9/27 where Nyarangi J.A (as he then was) stated 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. 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".

2. In the case of *Phoenix of E.A Assurance Company Limited v S.M. Thiga T/A Newspaper service* [2019] eKLR at paragraph 2, the Court of Appeal stated as follows:-

"In common English Parlance, 'jurisdiction' denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex-debito justitiae".



3. The Applicant in this case through submissions dated 4th July 2023 at paragraph 2.1.1 states as follows:-

“The Applicant/Tenant then occupied the premises from 25th October until 26th November 2022 when he was unlawfully evicted from the premises. The Respondent /Landlord was not provided with a termination notice prior to the eviction. As a result of the unlawful eviction, the Applicant/Tenant had his items thrown out where they were damaged and/or lost. These are the events that led to the filing of the application dated 19th April 2023.....”.

4. The Respondent raises the question of lack of jurisdiction in his replying affidavit sworn on 29th May 2023 as follows:

“That I am informed by my advocates on record which information I verily believe to be true, that the Applicant’s application is misconceived and lacking in merit since in the first place the Landlord/tenant relationship between me and the Applicant is non-existent presently and therefore the Honourable Tribunal lacks jurisdiction to entertain and determine the case”.

5. Counsel for the Respondent cites decisions in the cases of Republic v The chairman Business Premises Rent Tribunal ex-parte Velji Premchand Shah [2012] eKLR and Crystalized Tech Solutions v Ngong Butchers Co-operative and Another [2021] eKLR to buttress the point of lack of jurisdiction, both of which constitutes good law.

6. In the case of *Pritam v Ratilal & Another* [1972] EA 560 of page 562, Madan J. (as he then was) held as follows:-

“As stated in the Act itself, it is an Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this special legislation is to provide extra and special protection for tenants. A special class of tenants is created. Therefore, the existence of the relationship of landlord and tenant is a prerequisite to the application of the provisions of the Act. Where such a relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. Outside it, the tribunal has no jurisdiction”.

7. It is therefore clear that in absence of a Landlord/Tenant relationship between the Applicant and the Respondent, this Tribunal has absolutely no jurisdiction to entertain the application by the applicant. It is thus a candidate for striking out with costs.

8. In the premises, the following orders commend to me in this case:-

a. The Applicant’s application dated 19th April 2023 is hereby struck out with costs for want of jurisdiction.

b. The Respondent’s costs are assessed at Kshs.25,000/- against the Applicant.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY THIS 19TH DAY OF SEPTEMBER 2023.

HON. GAKUHI CHEGE

FOR CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



Ruling delivered in the presence of:-

Miss Sirengo for the Tenant

No appearance for the Landlord

