



**She's Beauty Parlor v Akamba Steel and General Wholesalers Ltd (Tribunal  
Case E1151 of 2023) [2024] KEBPRT 541 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 541 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1151 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MAY 3, 2024**

**BETWEEN**

**SHE'S BEAUTY PARLOR ..... TENANT**

**AND**

**AKAMBA STEEL AND GENERAL WHOLESALERS LTD ..... LANDLORD**

**RULING**

1. The tenant/applicant moved this tribunal vide a reference under Section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 21<sup>st</sup> December, 2023 with a complaint that the respondent has commenced distress for rent on allegations that the tenant is in rent arrears.
2. Following the above complaint, the tenant filed a Notice of Motion under a certificate of urgency of even date seeking that this Tribunal orders a stay of execution of the distress for rent pending the hearing and determination of the application and that the tenant deposits monthly rent with the Tribunal.
3. We have perused the lease agreement between the parties herein which is annexed as "HS1" and dated 5<sup>th</sup> January, 2023 and we find that the lease agreement's term is 5 years and 1 day from the lease commencement date which is indicated as 5<sup>th</sup> January, 2023. We have also found no termination clause in the lease agreement herein.
4. The Tribunal's jurisdiction is conferred by the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap. 301, Laws of Kenya in respect of controlled tenancies.
5. Section 2(1) of Cap 301 laws of Kenya defines a controlled tenancy as follows; -

"controlled tenancy" means 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; or
  - (iii) relates to premises of a class specified under subsection (2) of this section.”

6. In view of the foregoing provision of the applicable law, it is clear that the tenancy herein is not a controlled tenancy as the lease agreement is for a term of 5 years 1 day from the lease commencement date without a termination clause, therefore the Tribunal lacks jurisdiction to hear or determine this matter.

7. Although the issue of jurisdiction has not been raised by either party before us, we are entitled to consider it on our own motion at any stage of the proceedings in line with the Court of Appeal decision in *Jamal Salim v Yusuf Abdulahi Abdi & another* Civil Appeal No. 103 of 2016 [2018] eKLR where it was stated as follows: -

“Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another vs. Ulinzi Sacco Society Limited* [2002] 1 KLR 577, as follows;

- 1) .....
- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”

8. Consequently, this Tribunal has no option but to down its tools in line with the locus classicus case of *Owners of the Motor Vessel “Lillian S” – vs- Caltex Oil (Kenya) Ltd* (1989) eKLR where it was held as follows at pages 8-9/27: -

“..... 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”.

9. We therefore find and hold that this Tribunal has no jurisdiction to hear and determine the instant dispute and the same is a candidate for striking out. The interim orders given in the matter having been issued in error ought to be discharged/set aside forthwith.



## **Orders**

10. In conclusion, the following final orders commend to us;
- a. This matter is struck out for want of jurisdiction and all Interim orders are discharged.
  - b. The tenant is at liberty to file the matter in the appropriate forum.
- It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> MAY 2024.**

**HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)**

**HON GAKUHI CHEGE - (MEMBER)**

**BUSINESS PREMISES RENT TRIBUNAL**

**In the presence of:**

Ms. Thuku holding brief for Dr. Musau for Landlord/Respondent

No appearance for tenant.

