



**Waruhi v Royal Plams Mustard Limited & 2 others (Tribunal Case
E361 of 2024) [2024] KEBPRT 1636 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1636 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E361 OF 2024
A MUMA, MEMBER
NOVEMBER 11, 2024**

BETWEEN

DUNCAN MUNENE WARUHI TENANT

AND

ROYAL PLAMS MUSTARD LIMITED LANDLORD

AND

NISHAPA INVESTMENTS LIMITED 1ST RESPONDENT

FAST SECURITY SERVICES 2ND RESPONDENT

RULING

A. Parties And Their Representatives

1. The Applicant, Duncan Munene Waruhiu, is the tenant and had rented space at Magic Business Center, shop no. AT5, along Ronald Ngala Street (the “suit premises”).
2. The firm of Wambui & Associates Advocates represent the Tenant in this matter.
3. The 1st Respondent, Royal Palms Mustard Limited, is the Landlord who rented out space for business in the suit property to the Tenant. (the “Landlord”)
4. The firm of Otunga Law Advocates LLP Advocates represent the Landlord in this matter.
5. The 3rd Respondent, Fast Security Services, is a company that provides security services on the suit premises. (the “Interested Party”)
6. The Firm of Kinyua Mwaniki & Wainaina Advocates represent the 3rd Respondent in this matter.



B. Background Of The Dispute

7. Through a Reference and an Application both dated 14th March, 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders that inter-alia: that the Tenant be reinstated on the suit premises, the Landlord be restrained from interfering with the Tenant's occupation of the suit premises, the landlord be ordered to release the Tenants items, the Tenant be allowed to deposit rent in this Honourable Tribunal and the OCS Kamukunji Police Station to ensure compliance.
8. Upon perusal of the Tenant's Application, this Honourable Tribunal, on 18th March, 2024 issued the following orders ex-parte; that the Tenant be reinstated on the suit premises, the Landlord be restrained from interfering with the Tenant's occupation of the suit premises and the OCS Kamukunji Police Station to ensure compliance. Additionally, the Tribunal directed the matter be heard on 4th April, 2024.
9. Due to non-appearance by the Tenant on the set hearing date, this Honourable Tribunal dismissed the Tenant's/Applicant's Application and Reference for want of prosecution.
10. Consequently, the Tenant, vide an Application dated 5th April, 2024, canvassed via a Certificate of Urgency of even date sought for the suit to be reinstated. In response, the Landlord filed a Replying Affidavit sworn by Antony Mutahi on 17th April, 2024. Upon hearing of the Tenant's Application on 18th April, 2024, the Tribunal on 29th April, 2024 allowed the Tenant's Application for reinstatement of the suit.
11. Additionally, the Tenant filed two Further Affidavits sworn by Collins Musembi on 8th May, 2024 and Cecilia Wanjiru sworn on 13th May, 2024 in support of his case.
12. In response to the Tenant's Application dated 14th March, 2024, the 3rd Respondent filed a Grounds of Objection dated 17th May, 2024.
13. The Tribunal, on 29th April, 2024, directed the parties to file their Submissions. The 3rd Respondent filed its Submissions dated 21st June, 2024, the Tenant filed its Submissions on 13th September, 2024 and the 1st Respondent filed its Submissions dated 7th October, 2024.
14. Therefore, it is the Tenant's Application dated 14th April, 2024, and the 3rd Respondent's Grounds of Objection dated 17th May, 2024 which are the subject of this Ruling.

C. Tenant's Case

15. The Tenant avers that on 23rd February, 2024, the 1st Respondent locked his premises after he had refused to pay a deposit of Kshs. 6,000.00 for the installation of a post-paid electricity meter. Additionally, the Tenant avers that the Landlord, on 27th February, 2024 gained access to the Tenant's premises and took all his tools of trade.
16. Tenant avers that despite attempting to solve the matter by attending the 1st Respondent's offices, he notes that he was ignored by the 1st Respondent.

D. 1st Respondent's Case

17. The 1st Respondent avers that on or about March 2024, it undertook to install postpaid electricity meters on the suit premises. It notes that it informed all the Tenants in the suit premises of the installations and the Kshs. 6,000.00 deposit required.



18. The 1st Respondent avers that upon informing the Tenant herein of the said deposit, the Tenant expressed no intentions of complying with the same requested to be allowed to vacate the premises. The 1st Respondent further states that on or about March, 2024 the Tenant vacated the premises and left with his goods.
19. The 1st Respondent notes that the Tenant's allegation of being evicted and his goods being retained is false.

E. 3rd Respondent's Case

20. The 3rd Respondent avers that there exists no Tenant-Landlord relationship between itself and the Tenant. It further avers that it was only contracted to offer security services on the suit premises. As such, the 3rd Respondent contends this Honourable Tribunal lacks jurisdiction to hear and determine the suit herein.

F. Jurisdiction

21. The Jurisdiction of this Honourable Court has been contested by the 3rd Respondent vide its Grounds of Objection dated 17th May, 2024. It is the 3rd Respondent's contention that there exists no Tenancy relationship between it and the Tenant.

G. Issues For Determination

22. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the issues for determination before this Honourable Tribunal are:
 - a. Whether this Honourable Tribunal has the jurisdiction to hear and determine the present suit
 - b. Whether the Tenant is entitled to the orders sought

H. Analysis Of The Facts In View Of The Law

a. Whether this Honourable Tribunal has the jurisdiction to hear and determine the present suit

23. 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 (Supra) 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...”

24. 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. ...”



25. In the matter herein, this Honourable Tribunal's Jurisdiction is challenged on the ground that there exists no controlled tenancy relationship between the Tenant and the 3rd Respondent. 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. which has not been reduced into writing
- 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)

26. This Honourable Tribunal notes that the Tenant has not disputed the nature of his relationship with the 3rd Respondent. The Tenant has equally acknowledged that the 3rd Respondent is a company contracted to provide security services to the suit premises. As such, it is safe to assume that exists no tenancy relationship between the Tenant and the 3rd Respondent herein. Similarly, all parties acknowledge that there exists a Tenancy Relationship between the Tenant and the 1st Respondent.

27. Therefore, the question before this Honourable Tribunal is whether a misjoinder of a party defeats a suit. The effect of misjoinder of non-joinder of parties, is provided for by Order 1 Rule 9 of the Civil Procedure Rules, 2020, which sets out as follows:

"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."

28. In *William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others* [2016] eKLR the Court of Appeal held that –

"Most critically Order 1 Rule 9 of the Civil Procedure Rules (2010) makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit."

29. Needless to emphasize Articles 159(2)(d) of *the Constitution* of Kenya, 2010 provides that "Justice shall be administered without undue regard to procedural technicalities." The words of Ochieng J. in *Republic v District Land Registrar, Uasin Gichu and Another* (2014) eKLR on Article 159(2)(d) are also instructive.

30. In light of the above and being that there exists a controlled tenancy relationship between the Tenant and the 1st Respondent, the inclusion of the 3rd Respondent cannot defeat the suit herein. Therefore, it is the finding of this Honourable Tribunal that it has the jurisdiction to hear and determine the matter in dispute. Therefore, the 3rd Respondent's Grounds of Objection dated 17th May, 2024 is hereby dismissed.



b. Whether the Tenant is entitled to the orders sought

31. Vide his Application dated 14th March, 2024, the Tenant sought that the Tenant be reinstated on the suit premises, the Landlord be restrained from interfering with the Tenant's occupation of the suit premises, the landlord be ordered to release the Tenants items.
32. The Tenant invoked the Tribunal's power to investigate a complaint relating to controlled tenancy set out in Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya (hereinafter "Cap 301") under Section 12(4), which sets out as follows:
 - (4) In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.
33. The parties herein have presented two contrasting narratives of the series of the events that the led to the present suit. The Tenant has alleged that he was locked out of the suit premises by the 1st Respondent while the 1st Respondent alleges that the Tenant moved out of the premises out of his own volitation. Both parties are in agreement that the Tenant refused to pay a deposit of Kshs. 6,000.00 for the installation of a postpaid electricity meter.
34. Interestingly, though Tenant avers that they are still in the premises, he did not take any steps to enforce this Tribunal's Orders issued on 18th March, 2024 which included the Tenant being reinstated into the premises and the OCS Kamukunji Police Station to assist in enforcement. Additionally, the Pleadings filed denote that the Tenant last paid its rent in February, 2024.
35. Therefore, it would be safe to conclude that the Tenant vacated the suit premises as such there exists no Tenant-Landlord relationship between the parties herein.
36. The Tenant has also claimed Kshs. 376,850.00 being special damages for the possible damage and/or reduction of value of the goods illegally ceased and/or detained by the 1st Respondent.
37. The powers of the Business Premises Rent Tribunal are provided by Cap 301. Section 12(1)(l) of the Act provides that:
 1. 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:
 - (l) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;
38. It is established law that a claim for special damages have to be claimed and strictly proved by evidence. On this I am guided by the decision of the Court of Appeal in Richard Okuku Oloo v South Nyanza Sugar Co. Ltd (2013) eKLR where the Court held that:

“We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.”
39. In the matter herein, the Tenant produced a list of the goods seized marked as DMW1 in his Supporting affidavit dated 14th March, 2024. The Tribunal, however, observes that though the Tenant stated the



value of the said goods, he did not adduce any evidence in support of the values cited. Therefore, though the same is claimed the same has not been proven.

40. With the foregoing in mind, and after careful consideration of the pleadings and evidence filed thereof, I find that the Tenant herein has not adduced sufficient evidence to prove the Kshs. 376,850.00 as claimed.

G. Orders

41. Having established that this Honourable Tribunal has the jurisdiction to hear and determine the issues raised by the Tenant, the Tenant's Reference and Application dated 14th April 2024 is hereby dismissed with costs to the Landlord assessed at Kshs. 10,000.00.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 11th day of November 2024 in the presence of wangu for the Tenant Gisemba for Landlord & the 1st Respondent, Mvero holding brief for Wainaina for the 3rd Respondent.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

