



**Maronga v Okinyi; Omete (Objector) (Tribunal Case 12, 11 & 13 of 2021
(Consolidated)) [2024] KEBPRT 1107 (KLR) (1 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1107 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 12, 11 & 13 OF 2021 (CONSOLIDATED)
A MUMA, MEMBER
AUGUST 1, 2024**

BETWEEN

EVANS ANYEGA MARONGA LANDLORD

AND

GLADYS MORAA OKINYI TENANT

AND

ROSE NYABOKE OMETE OBJECTOR

RULING

Parties and their Representatives

1. Evan Anyega Maronga is the registered owner (the “Landlord”) of the parcel of land reference number PLOT No. 3378 WANJERE BOMORENDA (the “suit premises”).
2. The firm of Thuku, Njiru & Company Advocates represents the Landlord in this matter
3. Gladys Moraa Okinyi occupies the suit premises (the “Tenant”).
4. The Tenant appears in person
5. Rose Nyaboke Omete is a widow to the Landlord’s Brother (the “objector”)
6. The firm of S.M Sagwe & Co. Advocates represents the Objector in this matter.

BACKGROUND OF THE DISPUTE

7. Through References dated 3rd February, 2024, the Landlord instituted the suits Kisii BRPT No. 11 of 2021; Kisii BRPT No. 12 of 2021 and Kisii BRPT No. 13 of 2021 against the Objector, the Tenant and Ontomwa Eunice Marage (the “Parties”) respectively. The References were founded on the complaint that the Landlord had issued a Notice terminating the Tenancy. The Notice was not objected to by any



- of the Parties. As a result, he sought orders to evict the Parties and be allowed to distress for outstanding rent arrear.
8. Upon perusal of the Reference, this Honourable Tribunal directed the matter be brought for hearing on 29th March, 2021. On the set hearing date, the parties were absent.
 9. The Landlord, subsequently, filed an Application dated 29th April, 2021 canvassed through a Certificate of Urgent of even date in which he sought an order evicting Ontomwa Eunice Marage from the suit premises.
 10. Upon perusal of the Application, this Honourable Tribunal on 4th May, 2021 certified the Application as urgent and issued a hearing date on 25th May, 2021. Due to non-appearance of Ontomwa Eunice Marage, the Tribunal adjourned the matter to 22nd June, 2021.
 11. On 22nd June, 2021, upon hearing of the Application, this Honourable Tribunal allowed the Landlord's Application as prayed and ordered the OCS Suneka Police Station to assist in compliance. Additionally, the Tribunal directed the orders issued to apply in case Kisii BRPT No. 11 of 2021 and Kisii BRPT No. 13 of 2021.
 12. Consequently, the Objector herein filed an Application dated 18th March, 2024 canvassed through a Certificate of Urgency of even date, in which she seeks the orders issued on 22nd June, 2021 be varied, reviewed and/or set aside and that the Objector be restored in the suit premises.
 13. In response, the Landlord filed a Replying Affidavit sworn by the Landlord, a Notice of Preliminary Objection and Grounds of Opposition all dated 3rd June, 2024.
 14. It is therefore the Landlord's Notice of Preliminary Objection dated 3rd June, 2024 that is the subject of this Ruling.

LANDLORD'S CASE

15. The Landlord avers that the Objector is not a tenant of the suit premises. He avers that this Honourable Tribunal lacks jurisdiction to determine the subject of the Objector's Application as there exists no tenancy relationship between him and the Objector.
16. Additionally, the Landlord challenges the jurisdiction of this Honourable Tribunal on the grounds that it cannot determine issues of ownership of the suit premises.

Objector's Case

17. The Objector avers that she was not a tenant of the suit premises but had been receiving rent from the suit premises. She further avers that she was evicted from the suit premises which had been constructed by her late husband and which had been their matrimonial home.

Jurisdiction

18. The Jurisdiction of this Honourable Court has been contested by the Landlord vide a Notice of Preliminary Objection dated 3rd June, 2024.
19. It is the Landlord's contention that the subject matter raised by the Objector for determination does not fall within the ambit of this Honourable Tribunal as envisioned under of Section 12 (1) the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), Cap 301, Laws of Kenya.



Issues For Determination

20. 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.

Analysis And Findings

i. Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.

21. 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...”
22. 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. ...”

23. As a creature of statute, this Honourable Tribunal’s jurisdiction is as strictly defined in Cap 301. The Honourable Court in Republic v Business Premises Rent Tribunal & Anor exparte Albert Kigera Karume (2015) eKLR rightly held that:

“The Tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute, it can only do those things which the statute has empowered it to do since its powers are express and not implied... The powers of the Tribunal are contained in Section 12(1) of the Act and anything not spelled out to be done by the Tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under Section 12 (1)(a) to (n). The Act was passed to protect Tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the Tribunal is to hear and determine to it Section 6 of the Act (emphasis added).”

24. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301, Laws of Kenya under its Preamble sets out the rationale of the Act as follows:

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

25. As cited in the case Republic v Business Premises Rent Tribunal & Anor exparte Albert Kigera Karume (Supra) existence of a Landlord-Tenant relationship is a prerequisite condition to the application of



Cap 301. Where such relationship does not exist or has come to or been brought to an end, the provisions of Cap 301 will not apply. This Honourable Tribunal appreciates the fact that applicability of the Act is a condition precedent to the exercise of jurisdiction by the Tribunal; otherwise, the Tribunal will have no jurisdiction.

26. To this regard, Cap 301, under Section 2 sets out who tenant is as follows: -

“tenant” 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.

27. It is not a requirement that there be an existing written agreement for the tenancy to exist. A tenancy could be created by a lease or underlease, by an agreement for a lease or underlease by a tenancy agreement or by operation of law.

28. Admittedly, the Objector vide their Application dated 18th March, 2024 explicitly admits to not being a tenant of the suit premises at any point prior and during the suit herein. A reading of the said Application and the evidence annexed denotes that the Objector herein only seeks beneficial interest herein.

29. Therefore, in my considered view, issue raised by the Objector herein fall outside the jurisdiction of this Honourable Tribunal. Should the Tribunal proceed any further it would be acting ultra vires. The issue of beneficial interest sought by the Objector fall within the jurisdiction of the High Court and or Environment and Land Court of equal status as the High Court.

30. From the foregoing, this Honourable Tribunal has established that it does not have jurisdiction to hear and determine the present Application. 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.”

Orders

31. In the upshot and having established that this Honourable Tribunal has no jurisdiction to hear and determine the Objector’s Application, the following orders shall abide;

- a. The Preliminary Objection dated 3rd June, 2024 is hereby upheld.
- b. The Objector’s Application dated 18th March, 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 1st day of August 2024 in the presence of Mwaniki holding brief for the Landlord and in the absence of the Tenants.

HON A. MUMA



MEMBER

BUSINESS PREMISES RENT TRIBUNAL

