



**Macrence Company Limited v Kenya Bowling Centres Ltd & 2 others (Tribunal
Case E937 of 2022) [2023] KEBPRT 12 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 12 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E937 OF 2022
A MUMA, VICE CHAIR
JANUARY 20, 2023**

BETWEEN

MACRENCE COMPANY LIMITED APPLICANT

AND

KENYA BOWLING CENTRES LTD 1ST RESPONDENT

UCHUMI SUPERMARKET LTD 2ND RESPONDENT

JOSEPH NDERITU T/A JOGAN DRIES AUCTIONEERS 3RD RESPONDENT

RULING

A. Parties and representatives

1. The Applicant Macrence Company Limited is the tenant and had rented space on the Suit Property at Adams Arcade along Ngong Road for the business. (hereinafter known as the ‘tenant’)
2. The firm of Muthoni Wanja & Partners Advocates represent the Tenant/Applicant in this matter.
3. The 1st Respondent Kenya Bowling Centres Ltd is the alleged landlord and rented out space for the business in the suit property to the tenant (hereinafter the “landlord”)
4. The firm of Kahuthu & Kahuthu Advocates represent the 1st Respondent/Landlord in this matter.
5. The 3rd Respondent is an auctioneer company and was acting under the instructions of the 1st respondent.
6. The 2nd Respondent appears in person in this matter.



B. The dispute background

7. The 2nd Respondent was the initial landlord of the premises prior to a Court order requiring them to relinquish possession of the premises to the 1st Respondent. The 1st Respondent upon acquiring possession locked the premises since the tenant was a stranger to them and they had no tenancy relationship. They also claimed that the tenant was in arrears and had defaulted in paying rent.
8. In opposition to the 1st Respondent's action of locking the premises, the Tenant has filed a Reference and a Notice of Motion application dated October 17, 2022 under section 12 (4) of the [*Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act*](#) Cap 301. The Tenant was seeking that this Honourable Tribunal grants orders restraining the Landlord from harassing, trespassing, evicting and interfering with the quiet possession by the tenant pending the hearing and determination of this matter as well as that the Landlord allow the Tenant access to the premises.

C. The tenant's claim

9. The tenant filed a Reference and a Notice of Motion Application dated October 17, 2022 to which he obtained orders requiring the Landlord to open the premises.
10. The tenant also filed an Application dated November 15, 2022 seeking that the 3rd Respondent be joined to the suit and have him reopen the premises which was granted.

D. The landlord's claim

11. The Landlord has filed a Preliminary Objection and Grounds of Opposition dated October 25, 2022 and November 25, 2022.

E. List of issues for determination

12. It is the contention of this Tribunal that the issues raised for determination are as follows;
 - I. Whether the Tribunal has Jurisdiction to determine the matter?

F. Analysis and Findings

Whether the Tribunal has the Jurisdiction to determine the matter?

13. Section 12 of the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#) Chapter 301 Laws of Kenya requires that the Tribunal in its dealings must restrict itself to relationships that fall under the ambit of Controlled Tenancies as defined under Section 2 of [*cap 301*](#).
14. Before proceeding to pronounce itself on the matter, the Tribunal must evaluate whether such a relationship exists between the Tenant and the Respondent.
15. The 1st Respondent has averred that the same does not exist and that they do not have any relationship whatsoever with the Tenant. They acknowledge that the Tenant was a Licensee of the 2nd Respondent but the said relationship ceased to exist by virtue of the orders issued in Insolvency Petition No. 25 of 2018 which required that the 2nd Respondent grant vacant possession to the 1st Respondent and that all subletting by the 2nd Respondent was declared illegal.
16. The Tribunal acknowledges the fact that upon termination of the License, the Tenant remained in the premises and went ahead to pay rent for the month of November 2022. It is on this premise that the



Tenant avers that they are a Controlled Tenant and as such the Tribunal has Jurisdiction to determine the matter.

17. The Tribunal takes note of the fact that by dint of Section 5(1) the Tenant would have been warranted to claim that they are a controlled tenant. However the Court orders issued by the High Court on June 8, 2022 supersede the provisions above. Also, the payment of rent to the alleged new landlord was made after the orders had been issued.
18. In light of this, the Tribunal is unable to establish a clear relationship between the Tenant and the 1st Respondent as a Landlord. As a result, the Tribunal is forced to down its tools for want of Jurisdiction.

G. Orders

- a. The upshot is that the Landlord's Preliminary Objection and Grounds of Opposition dated **October 25, 2022** and **November 25, 2022** are hereby upheld.
- b. The Tenant's Reference and Application are dismissed.
- c. Each party shall bear their own Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 20TH DAY OF JANUARY 2023 IN THE PRESENCE OF MUTURI FOR THE TENANT AND KAHUTHU FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

