



**Mbugua & another v Kariuki (Tribunal Case E782 of 2023)  
[2024] KEBPRT 1116 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1116 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E782 OF 2023  
P KITUR, MEMBER  
MAY 17, 2024**

**BETWEEN**

**FRANCIS MBUGUA ..... 1<sup>ST</sup> CLAIMANT**

**MONICAH WAITHIRA MBUGUA ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**WINNIE NJERI KARIUKI ..... LANDLADY**

**RULING**

**A. Parties And Representatives**

1. The Applicants Francis Mbugua and Monica Waithira Mbugua lodged a Claim against the Landlady for an intended Tenancy in premises known as Awesome Arcade (suit property) owned by the Landlady.
2. The Firm of Kamau J Mwangi & Company Advocates represents the Tenant.
3. The firm of Rumba Kinuthia & Company Advocates represents the Landlord.

**B. The Dispute Background**

4. Vide Reference dated 15<sup>th</sup> August 2023, the Claimants aver that sometime in the year 2022, they entered into a tenancy agreement with the Landlady over the suit property in which the Landlady agreed to lease them a stall in Githurai within Nairobi County.
5. It is the Claimants' case that the agreed rent was Kshs. 25,000/= per month payable annually, together with the equivalent of one month's rent being Kshs. 25,000/= all totaling Kshs. 325,000/=.
6. The Claimants curiously claim to have been refunded Kshs. 50,000/= but further go ahead to state that a balance of Kshs. 325,000/= remains unrefunded.



7. The Landlady in response filed a Notice of Preliminary Objection dated 11<sup>th</sup> March 2024 challenging the jurisdiction of this Tribunal, which we first have to consider before delving into the other issues.

### C. List Of Issues For Determination

8. The issues raised for determination are as follows;
- a. Whether the Tribunal has jurisdiction to determine this matter.

### D. Analysis And Findings

#### a. Whether the Tribunal has jurisdiction to determine this matter

9. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to down its tools where want of jurisdiction is deemed not to exist. In the case of *Owners of the Motor Vessel 'Lillian' (s) versus Caltex Oil (Kenya) Ltd* [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

10. The question therefore arising is whether there exists a tenancy relationship between the Tenant and the Landlord subject to the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301).
11. The principles established by the time-honored, *Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors* (1969) EA 696, are settled that;

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

12. From the foregoing, it is clear that a preliminary objection is meant to only raise a pure point of law on the assumption all facts pleaded by the other side are correct.
13. The Landlady alleges that the Claimant has never taken over the premises as Tenants, which fact appears not to have been disputed by the Tenant.
14. In *Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others* [2016] eKLR, the Judge cited with approval the case of *Pritam vs. Ratilal and Another* Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been



brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

15. The position in the above cited authority applies, without doubt, in circumstances where a Tenancy has come to an end within the confines and in a manner provided under Cap 301. It would similarly apply in situations as the present case, where the Tenancy relationship never commenced at all.
16. From the foregoing, there does not exist a relationship that can be termed as a Landlord and Tenant relationship, which therefore ousts this tribunal’s jurisdiction to hear and determine the dispute.
17. I therefore proceed to order as follows;
18. Orders
  - a. The Landlord’s Preliminary Objection is hereby upheld.
  - b. The Tenant’s Reference dated 15<sup>th</sup> August 2023 is hereby struck out.
  - c. Costs are awarded to the Landlord assessed at Kshs. 20,000/=.

**HON P. KITUR**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, signed and delivered virtually by Hon P. Kitur this 17<sup>th</sup> day of May 2024 in the presence of Mwangi for the Tenants and Muchoki for the Landlady.

**HON P. KITUR**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

