



**Kang'ara v Wanjohi (Tribunal Case E329 of 2024)  
[2024] KEBPRT 1424 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1424 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E329 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
SEPTEMBER 27, 2024**

**BETWEEN**

**ESTHER KANG'ARA ..... APPLICANT**

**AND**

**DANIEL WARUINGI WANJOHI ..... RESPONDENT**

**RULING**

1. This Ruling pertains the Tenant/Applicant's application dated 31/5/2024. The same sought for the following reliefs;-
  - a. Spent
  - b. That upon hearing this notice of motion application inter-partes, the Honourable Tribunal be and is hereby pleased to vacate, vary and/or set aside the orders dated 16/5/2024 pending hearing of the application inter-partes.
  - c. That upon hearing this notice of motion application inter-partes, the Honourable Tribunal be and is hereby pleased to issue a stay of execution of the orders dated 16/5/2024 pending hearing of the application inter-partes.
  - d. That upon hearing this notice of motion application inter-partes, this Honourable Tribunal be and is hereby pleased to order the respondent to provide proof of ownership of the suit premises and/or the existence of a landlord/tenant relationship.
  - e. That the OCS Kikuyu Town Police Station do ensure compliance of these orders.
  - f. That upon hearing this notice of motion application, the Honourable Tribunal be and is hereby pleased to dismiss the reference and the application by the respondent/applicant for want of jurisdiction



2. The application herein was filed in answer to the orders issued by this court on the 16/5/2024 pursuant to the respondent's application dated 28/2/2024. The orders sought in the said application are;
  - i. Spent
  - ii. That the tenant is hereby ordered to give vacant possession of the business premises located at Kikuyu immediately on account of non-payment of rent arrears amounting to Kshs. 297,000/= up-to March, 2024 and in default O.C.S. Kikuyu Police Station to enforce eviction
  - iii. That the landlord is granted leave to break into the tenant's business premises located at Kikuyu, gain access and let it to another tenant under the supervision of O.C.S. Kikuyu Police Station.
  - iv. That the O.C.S. Kikuyu Police Station to ensure compliance.
  - v. That cost of this application be provided for
3. As stated herein above, the application by the respondent was allowed on the 16/5/2024 in the following terms;

“the tenant has been duly served and is absent. The notice of termination has also taken effect since the 1/2/2024. The landlord's application is therefore allowed in its entirety. The tenant will also pay costs of this suit assessed at Kshs. 10,000/=. This file is ordered closed”.
4. The respondent has filed the replying affidavit sworn on the 19/7/2024. In it, he asserted that;
  - i. The applicant was his tenant and was in default of payment of rent and had arrears of Kshs. 297,000/= at the time of filing the suit
  - ii. He was the owner of the container where the applicant operated her business from-Annexure “DWW1”
  - iii. Had issued a termination notice to the applicant which had not been responded to and had since taken effect
  - iv. Requested to have the applicant ordered to vacate the demised premises, pay all the rents in arrears and costs of the suit.
5. On her part the applicant filed a further affidavit sworn on the 19/8/2024 and asserted that;
  - i. There was no landlord and tenant relationship between the parties and this court had therefore no jurisdiction over the matter.
  - ii. She was never served with any court processes in respect of the respondent's reference and application both dated 19/2/2024.
  - iii. She had never paid any rent to the respondent since the year 2021 and challenged the respondent to explain how she got into the premises
  - iv. She therefore requested that her application be allowed with costs and the respondent's suit be dismissed with costs
6. We have perused all the pleadings in this matter and are of the view that the issues that arise to determine this matter are the following;
  - a. Whether this court has jurisdiction over the matters herein



- b. Who should bear the costs of these proceedings.
7. If the court upholds the first issue which is a challenge on its jurisdiction, then the proceedings herein would be disposed off conclusively. The jurisdiction of this court is conferred by section 2(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301) hereinafter “the Act”. The same provides that;-

“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”
8. The Act further provides the threshold of one to be qualified by definition as a tenant and also as a landlord. Section 2 of the Act defines the two (2) 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, and includes a sub-tenant”.

Landlord- “In relation to a tenancy, means the person for the time being entitled as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy”

9. In this matter, there is no evidence whatsoever that the parties ever entered into any landlord and tenant relationship. The tenant has asserted that it was not by the consent of the landlord that she is in occupation of the demised premises and has further emphasized that she has never paid any rent to the respondent
10. Though the respondent has availed documents to assert his rights over the demised premises, he has not been able to demonstrate what kind of an agreement they had with the applicant, how she got into the demised premises without paying any rent security deposit or indeed pay any rents for the premises since 2021.
11. In our view, and looking at the circumstances of this case in its totality, we are persuaded that no relationship of a tenant and landlord has been demonstrated herein. We cannot however overrule the existence of any other form of relationship between the parties.
12. When no landlord and tenant relationship is established between the parties, then the court has no jurisdiction to superintend over such a matter. In this, we draw from the wisdom of the holding in the case of;- *Pritam -Vs- Ratilal & Another* (1972) EA where it was held that;-

“Therefore, the existence of a relationship of landlord and tenant is pre-requisite to the application of the provisions of the Act. Where such a 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 the Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined under Section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction”.



13. Without jurisdiction, it therefore follows that this court may not address all other issues raised by the parties in the matter. In this, we find reliance in the case of Owners of The Motor Vessel “Lillians” -Vs- Caltex Oil Kenya Ltd (1989) I KRL where the court of appeal held that;-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a court takes upon itself to exercise jurisdiction which it doesn’t possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

14. In this case therefore, the orders made on the 16/5/2024 are vacated as they were issued without jurisdiction and all the proceedings herein will be struck out for the same reason. In our view, the dispute between the parties belongs to another jurisdiction probably the civil jurisdiction of other courts.
15. On the issues of who should bear the costs of this application, we opine that each party should bear own costs. This is for the reason that the respondent has demonstrated ownership of the demised premises whereas the tenant has never paid anything for such occupation.
16. In the final analysis, we make the following orders;-
- a. That all the proceedings herein are struck out for want of jurisdiction
  - b. That each party should bear own costs of these proceedings
- Those are the orders of the court

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**HON. NDEGWA WAHOME, MBS**

**PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**AND**

**HON. JOYCE MURIGI**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

In the presence of:

Mr. Nyairo holding brief of Mr. E.K. Njagi for the Landlord/Respondent

And

Esther Kang’ara the Applicant in Person

