



**Veronica Gachoki t/a Mive Laundrymart v Silver Dash Limited (Tribunal Case E1082 of 2023) [2024] KEBPRT 932 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 932 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1082 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
JULY 16, 2024**

**BETWEEN**

**VERONICA GACHOKI T/A MIVE LAUNDRYMART ..... APPLICANT**

**AND**

**SILVER DASH LIMITED ..... RESPONDENT**

**RULING**

1. The instant case was instituted by way of a Reference dated 1<sup>ST</sup> November 2023 pursuant to Section 12(4) of Cap. 301, Laws of Kenya through which the Applicant complained that the Respondent had unlawfully disconnected electricity and increased rent for the suit premises thereby denying her an opportunity to conduct business. She therefore sought for protection from this Tribunal.
2. The tenant simultaneously filed a motion of even date under certificate of urgency seeking inter-alia for restraining orders against the landlord from interfering, harassing, increasing rent, threatening to evict and/or locking her from the suit premises.
3. Among the documents annexed to the supporting affidavit is the license agreement dated 1<sup>st</sup> March 2023 showing that the suit premises were given out to the tenant for a period of one year from 1<sup>st</sup> March 2023 to 28<sup>th</sup> February 2024 with the option of renewal subject to the licensor's approval. The tenant also annexed a payment receipt for the month of September 2023 in respect of rent and other charges.
4. On the other hand, the landlord filed an application dated 30<sup>th</sup> December 2023 seeking for orders that the tenant pays outstanding license fees together with outstanding utilities for electricity owed to it. It also sought that the Tribunal vacates the orders of 1<sup>st</sup> November 2023 issued in favor of the tenant on account of failure to pay the license fees for the months of November and December 2023. She is also accused of failure to pay electricity bill of Kshs 125,113/=.
5. On 13<sup>th</sup> February 2024, this matter came up in court in absence of the tenant and an order was made directing her to clear the sum of Kshs 125,000/= in unpaid electricity bill for the suit premises.



The landlord's Counsel informed the Tribunal that the tenant had vacated the suit premises without clearing the said amount.

6. On the same day, the tenant filed yet another application dated 13<sup>th</sup> February 2024 seeking for stay of the foregoing orders and for review, setting aside or variation thereof. She also sought for inspection of the suit premises by the Tribunal's Rent Inspector to ascertain whether she had vacated therefrom. A stay was granted ex-parte and the application was ordered to be served for hearing inter-partes on 12<sup>th</sup> March 2024.
7. A site inspection was carried out thereafter and a report filed in court confirming that the tenant was trading in Shop No. D-10 in the name and style of MIVE LAUNDRY MART. The Rent Inspector also established that the parties entered into a one-year agreement which had not been renewed. The landlord had issued three notices dated 9<sup>th</sup> August 2023, 9<sup>th</sup> October 2023 and 27<sup>th</sup> October 2023. The last letter indicated that the tenant's rent had been reviewed to the original sum of Kshs 25,000/= plus a deposit of Kshs 50,000/=. The tenant was however not willing to pay the new rent.
8. The landlord filed a replying affidavit sworn on 20<sup>th</sup> February 2024 by one Veronica Sultz being its Head of Finance and Administration wherein she deposes that the tenant had carried away most of her belongings from the suit premises and that the previous orders issued in favor of the tenant were made without hearing the landlord. The tenant was in rent and electricity bills arrears as per annexure marked "SD-1".
9. She also deposes that the license agreement had an arbitration clause as a result of which this matter should have been referred to arbitration. In addition, the tenant was in arrears of 4 months. According to the landlord, there was no law or statute that can coerce it to extend the terms of the license agreement which had expired.
10. The landlord's replying affidavit aforesaid raises a critical issue of jurisdiction which is a threshold matter that ought to be considered before the merits of the application in line with the decision in the case of Phoenix of E.A Assurance Company Limited Vs S.M Thiga t/a Newspaper Service (2019) eKLR, wherein the Court of appeal had the following to state at paragraph 2 on the issue;

"2. In common English parlance, 'Jurisdiction' denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae....."

11. Further in the case of The Owners and Master of the Motor vessel "Joey" and The Owners and Masters of the Motor Tugs "Barbara" & "Steve B" (2007) eKLR, the Court of appeal had the following to state on the issue of jurisdiction at page 7/15:

"That is the underlying principle contained in the two previous decisions of this Court in the cases of THE OWNERS OF THE MOTOR VESSEL "LILIAN S" V. CALTEX OIL (KENYA) LTD [1989] KLR 1, and ROY SHIPPING SA & ALL OTHER PERSONS INTERESTED IN THE SHIP "MAMA OTAN" VS. DODOMA FISHING COMPANY LTD, *Civil Appeal No. 238 of 1997* (unreported). In the LILIAN S, the Court, consisting of the late Mr. Justice Nyarangi, the late Mr. Justice Masime, and Mr. Justice Kwach, relying on previous decisions of the Courts of the United Kingdom, decisions such as The River



Rima [1987] 3 ALL E.R 1, The I Congreso del Partido [1983] 1 AC 244 and such like cases, held that the question of jurisdiction, raised in the circumstances such as those existing in the present appeal, is a thresh-hold issue and must be determined by a judge at the thresh-hold stage, using such evidence as may be placed before him by the parties. Nyarangi, J.A graphically put it thus:-

“..... I think 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. 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 (sic) tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. ....”

The learned Judge of Appeal then referred to certain passages in the text “Words & Phrases Legally Defined.” – Vol. 3: I – N at pg. 113 and then continued:

“It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined. I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”

12. Section 2(1) of Cap. 301, defines a controlled tenancy as follows;

“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; or
  - (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;”

13. It is clear from the documents on record that what the parties entered into was a license agreement for one (1) year which had an option for renewal that was not exercised by the parties. Instead, the tenant has embarked on litigation in respect of other issues leading to expiry of the license in the pendency of this matter. Although the agreement created a controlled tenancy, it cannot be extended by this Tribunal in absence of consensus between the two parties.



14. The duty of this Tribunal is to interpret and enforce contracts entered into by parties and not to make new agreements for them. That is what the court of appeal stated in *National Bank Limited Vs Pipeplastic Samkolit (k) Limited & Another* (2001) eKLR;

“..... A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.” (emphasis added)

15. We are not therefore persuaded that the tenant is entitled to the review or setting aside of the orders of 13<sup>th</sup> February 2024. A tenant whose term of tenancy has come to an end without renewal by the landlord has no other option than to vacate the suit premises in line with the court of appeal decision in *Kasturi Limited Vs Nyeri Wholesalers Limited* (2014) eKLR wherein it was held as follows:-

“

- “ 12. In the instant case, the appellant was put in possession of the rented premises by the respondent. The tenancy is stated to be five years; notice was given to the appellant that the lease shall not be renewed; the appellant on his part acknowledges and admits existence of the tenancy agreement between the parties; the duration of the tenancy as five years is not disputed; the receipt of notice of non-renewal of the lease is also not disputed. A tenant who has been put into possession cannot challenge the title of the landlord (See *E.H. Lewis & Son. – v- Morelli*,

(1948) 2 All ER 1021). Upon the grant of a lease or tenancy, both the landlord and tenant are in general estopped from denying the validity of the transaction. In the instant case, neither the landlord nor the tenant is permitted to assert that the tenancy which they created is invalid. It is also trite law that a lease cannot be extended by implication where an express notice for non- renewal has been given.

13. The appellant submitted that upon expiry of the lease on 14<sup>th</sup> April, 2009, a tenancy at will arose.

In law, a tenancy at will arises whenever a tenant with the consent of the landlord, occupies qua tenant on the terms that either party can determine the tenancy at will. In the present case, there is no consent on the part of the respondent who is the landlord. A tenant cannot become a tenant at will by refusing to vacate the demised premises when an express notice of non-renewal has been given. From the facts of this case, we find that the appellant is neither a tenant at will nor a tenant at sufferance. A tenancy at sufferance arises where a tenant, having entered upon the land under a valid tenancy, holds over without the landlord's assent or dissent. (See *Remon – v- City of London Real Property Co. Ltd.*, (1921) 1 KB 49, 58). In the present case, the appellant is holding over the demised premises without the landlord's assent and with the respondent's dissent and as such, the appellant is not a tenant by sufferance. By holding over the demised premises, the appellant is obligated to pay compensation for use and occupation of the premises and is liable to eviction.”

16. In the premises, the tenant's application dated 13<sup>th</sup> February 2024 is a candidate for striking out.
17. In conclusion, the following final orders commend to us in this matter;



- a. The tenant's application dated 13<sup>th</sup> February 2024 is hereby struck out with costs for want of jurisdiction.
- b. The interim orders given on 14<sup>th</sup> February 2024 are hereby discharged and/or set aside.
- c. Costs of Kshs 25,000/= are awarded to the landlord/Respondent for this case.

It is so ordered.

**RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 16<sup>th</sup> DAY OF JULY 2024.**

**HON. GAKUHI CHEGE**

**PANEL CHAIRPERSON**

**HON. JOYCE OSODO**

PANEL MEMBER

IN THE PRESENCE OF:-

Miss Kariuki holding brief for Miss Faith Aketch for the tenant/applicant

No Appearance by the landlord/respondent

