



Shah v Nuran & another (Sued as Personal Representatives of the Estate of Gulshaker Badruin Muran) (Tribunal Case E748 of 2022) [2023] KEBPRT 193 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEBPRT 193 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E748 OF 2022
A MUMA, VICE CHAIR
MARCH 28, 2023**

BETWEEN

JITESH BHARAT SHAH TENANT

AND

ALSHAD NURAN 1ST LANDLORD

NAZLIN CHARANIA 2ND LANDLORD

**SUED AS PERSONAL REPRESENTATIVES OF THE ESTATE OF GULSHAKER
BADRUIN MURAN**

RULING

A. Parties And Representatives

1. The applicant Jitesh Bharat Shah is the tenant and rented space on the suit property erected on L.R No. 1870/1/331 situated in Westlands. (hereinafter known as the ‘tenant’)
2. The firm of D. Muinde & Associates Advocates represent the applicant/tenant in this matter.
3. The respondents are the landlord are the owners of the suit property and rented out space to the tenant. (hereinafter known as the ‘landlord’)
4. The firm of Mwangangi Nzisa & Associates represent the Landlord/Respondent in this matter.

B. The Dispute Background

5. The Landlord and the tenant entered into a tenancy agreement on 21st February 2020 for a period of two years and a monthly rent of Kshs.140,000.00.
6. The tenant alleges that on 6th August 2022 the landlord sent auctioneers to the premises who carted away the tenant’s goods being a motor vehicle in an attempt to distress for rent and evict the tenant.



7. As a result, the Tenant has filed a Reference and a Notice of Motion Application under dated 23rd August 2022 under section 12 (4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The Tenant is seeking that this Honourable Tribunal grants orders restraining the Landlord from terminating the tenancy agreement or disposing of the Tenant/Applicant's goods pending the hearing and determination of this matter.

C. The Tenant's Claim And Landlords Response

8. The Tenant/Applicant has filed a Reference and a Notice of Motion Application dated 23rd August 2022. Which application and reference was dismissed ex parte by my brother Hon Mugambi on 7th of September 2022.
9. The Tenant filed an application dated 7th September 2022 for setting aside and reinstatement which was granted interm of prayers 2 and 3 and set down for hearing before the chairman who delivered a ruling on 5th of January 2023 reinstating the application dated 23rd of August 2023 and setting aside all the earlier orders of 7th September 2022.
10. The application was set down for hearing and proceeded before myself to which the landlord filed a response replying affidavit sworn on 30th October 2022 and Supplementary response sworn on 1st February 2023 to the Tenants further response sworn on 25th January 2023.
11. I have considered all the documents filed by parties and ruling delivered by my brother Chairman Hon Mugambi setting aside his ex parte orders together with the submissions of both parties.

List Of Issues For Determination

12. The issues raised for determination are as follows;
- a. Whether the Tribunal has jurisdiction
 - b. Should it have jurisdiction whether the Landlords action to distress were lawful under cap 301.

D. Analysis And Findings

13. The issue of jurisdiction has lingered on from the onset of this proceedings it is the reason the application and reference was dismissed in the first instance though ex parte by the Hon Chairman who gave the Tenant the benefit of doubt when reinstating the same.
14. The landlords in their replying affidavits presented that the aforementioned agreement between themselves and the tenant was for a residential premise. Further that they had not in any way consented to it being converted or to the alleged renovations by the tenant.
15. In the Ruling delivered by the Chair, Hon. Mugambi on 6th January 2023, it is clear that there indeed was a conflict between the parties with regards to the use of the premises. The tenant alleged that the same were converted to commercial while the Landlord states that they remain residential as was in the agreement.
16. I have perused the Agreement entered into between the parties herein. Clause 1.7 of the agreement provides as follows;
1. 7 User
- “To use the Maisonette as a residential premises for the occupation of one family unit only and not for any other purpose whatsoever.”



17. In light of this it is evident that the premises were meant for residential purposes. As a result of this in order to convert the same to a commercial premises, there should have been an amendment or an addendum to the mother agreement between the parties. There is no proof that the same was done by the landlord and the tenant and as such the Tribunal deems that the suit property remains for residential purposes.
18. Additionally, Section 67 of the Land Act provides as follows;
 67. Consent by lessor to application by lessee under lease
 - (1) On and after the commencement of this Act, a covenant by the lessee not to take an action without the consent of the lessor shall be construed as requiring the lessor not unreasonably to withhold consent;
 - (2) If a lessee applies to the lessor for consent to—
 - (d) change the use of the land or buildings from a use which is permitted under the lease; the lessor shall inform the lessee, in writing, within a reasonable time after receiving the application, whether the lessor is giving or refusing consent.

In addition the Evidence Act Section 98 provides that when the terms of any contract or grant or other disposition of property ... have been proved according to section 97, no evidence of any oral agreement or statement shall be admitted between parties contradicting, varying, adding or subtracting from its terms.
 19. Based on the foregoing, the Law expressly requires that prior to changing the use of the property the tenant should have acquired express authority from the landlord in writing. They allege that the landlord did consent to the change, however no evidence has been presented to show that the landlord approved of the change.
 20. Additionally, I take note of the fact that the Tenant had previously instituted the matter at the Rent Restriction Tribunal vide Case No. E267 of 2022 which was the right forum but upon getting unfavorable orders the tenant decided to withdraw the matter.
 21. It then appears that the tenant was indeed well versed with the fact that the premises are residential and no consent was given to convert the same and as such they were forum shopping in an attempt to get favorable orders.
 22. Based on the foregoing it is evident that the premises are residential and as a result do not fall within the ambit of the Jurisdiction of the Tribunal. In light of this I cannot pronounce myself on the issues raised in this matter and encourage the parties to seek redress in the right forum.
 23. In light of the foregoing, I therefore proceed to order as follows;

E. Orders

- a. The upshot is that the Tenant's Reference and Application dated 23rd August 2022 are hereby dismissed for want of Jurisdiction.
- b. The Landlord shall have Costs assessed at Kshs. 30,000.00

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 28TH
DAY OF MARCH 2023**

In the presence of Muinde for the tenant and Nazlin Charani for the Landlord.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

