



**Benard Kipchumba t/a Classic Exective Car Wash v George Ndirangu t/a Seconders General Merchants (Tribunal Case E008 of 2024) [2024] KEBPRT 788 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 788 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E008 OF 2024  
CN MUGAMBI, CHAIR  
MAY 8, 2024**

**BETWEEN**

**BENARD KIPCHUMBA T/A CLASSIC EXECTIVE CAR WASH ..... TENANT**

**AND**

**GEORGE NDIRANGU T/A SECONDRS GENERAL  
MERCHANTS ..... LANDLORD**

**RULING**

1. The notice of preliminary objection by the Landlord dated 20.3.2024 is brought on the grounds that;-
  - a. The Application is self defeating as the Applicant admits there is a new Tenant in place and as such he has no locus to approach this Honourable Tribunal.
  - b. There is no tenancy relationship between the alleged Tenant/Applicant and the Respondent to warrant intervention of this Honourable Tribunal.
  - c. This Honourable Tribunal has no jurisdiction to entertain the instant Application or the Reference it emanates from.
2. In his brief submissions, Counsel for the Landlord stated that the Tenant has admitted in his affidavit that there is already a new Tenant on the suit premises. Counsel further stated that the Tenant having admitted that he is no longer a Tenant in the suit premises, he cannot avail himself the protection of Cap 301 of the Laws of Kenya.
3. Counsel for the Tenant on her part submitted that the parties herein entered into a lease agreement dated 5.4.2023, that the Tenant has paid rent as per the agreement and the lease agreement has not been terminated.



4. Counsel for the Tenant further submitted that the Landlord returned water tanks and a water purifying machine belonging to the Tenant and has also not refunded the Tenant's deposit. The Tenant's Counsel submits that these are not actions consistent with a terminated tenancy.
5. It was further submitted by the Tenant's Counsel that the Landlord cannot be allowed to forcefully remove the Tenant from the suit premises and install another Tenant.
6. The only issue that falls for determination in this preliminary objection is whether there exists a landlord-Tenant relationship between the parties and whether therefore, the Tribunal has the jurisdiction to hear and determine this dispute.
7. The Complaint by the Tenant dated 8.12.2023 was brought on the basis that the Landlord had unlawfully without notice evicted the Tenant as evidenced in the Application and the Tenant's affidavit in support of the Application.
8. In the Tenant's grounds in support of his motion dated 8.12.2023, at ground (f), the Tenant has stated:-

“That the landlord herein without notice or respect of the agreement thereof, proceeded and rented the said business premises to another tenant who is undertaking the same business of car wash.”

In the preceding ground (e), the tenant has stated:-

“the interference by the landlord necessitated the Applicant herein to remove his car wash machine from the premises as he waited for reconnection of electricity and water.”

9. The Tenant at paragraphs 5, 6 and 7 of his supporting affidavit further admits that the suit premises have been given out to another Tenant.
10. Although the Tenant does not say when the Landlord gave out the suit premises to another Tenant, it is apparent that by the time the Tenant filed the instant suit, he was not a tenant in the suit premises as the same had admittedly been given out to another Tenant.
11. It is now settled law that for the provisions of Cap 301 to apply, there must be in existence the relationship of a Landlord and Tenant between the parties. Where such a relationship has terminated or been terminated, then the provisions of the Act do not apply.

In the case of *Pritam vs Ratilal & Another*, [1972] EA 560, the court 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 Act can be made to apply, outside it the Tribunal has no jurisdiction.”

12. I am satisfied in the circumstances of this case, that there does not exist a landlord and Tenant relationship between the parties and consequently, the Tribunal has no jurisdiction to hear and determine this dispute.
13. Consequently, the Complaint herein and the Application by the Tenant both dated 8.12.2023 are dismissed for want of jurisdiction.



14. Each party will bear their own costs.
15. This file is ordered closed on those terms.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF MAY, 2024**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Ms. Kariuki for the Tenant and in the absence of the Landlord and Counsel

