



Mathenge v Mburu (Tribunal Case E827 of 2022)
[2024] KEBPRT 1215 (KLR) (28 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1215 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E827 OF 2022
A MUMA, MEMBER
AUGUST 28, 2024

BETWEEN

JACKSON K MATHENGE TENANT

AND

RACHEL MBURU LANDLORD

RULING

A. Parties and their Representatives

1. Jackson K. Mathenge (the “Tenant”) is the proprietor of the Business known as Tukutane Pub situated on Shops No. 2A & B erected on land parcel no. Thika Majengo Block 11/233 (the “suit premises”).
2. The Firm of S.B Otieno & Co. Advocates represents the Tenant in this matter
3. Rachel Mburu (the “Landlord”) is the registered owner of all that premises erected on land parcel no. Thika Majengo Block 11/233.
4. The Landlord appears in person.

B. Background Of The Dispute

5. Through a Reference and an Application dated 19th September, 2022 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders that inter-alia: the Landlord be compelled to reopen the suit premises and allow the Tenant free access to the premises and failure to open the Tenant to break and gain access with the assistance of the OCS Thika Police Station, the Landlord be restrained from evicting, harassing and/or interfering with the Tenant and the OCS Thika Police Station to assist with compliance.
6. Upon perusal of the Tenant’s Application and Reference, the Honourable Tribunal, on 20th September, 2024, ordered the Landlord to reopen the suit premises and allow the Tenant free access



to the premises and failure to open the Tenant to break and gain access with the assistance of the OCS Thika Police Station and the OCS Thika Police Station to assist with compliance.

7. Due to non-appearance of the parties, on 5th April, 2023, this Honourable Tribunal dismissed the suit herein. The Tenant filed a letter dated 9th May, 2023 highlighting reasons for the non-appearance and consequently, the Tribunal reinstated the suit for hearing and determination on merits and fixed the matter for hearing on 13th July, 2023.
8. On 13th July, 2023, the Honourable Tribunal dismissed the suit again due to non-appearance.
9. The Tenant through an Application dated 26th April, 2024 canvassed through a Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders that inter-alia: the Tribunal be pleased to set aside and/or review its order issued on 13th July, 2023, the suit herein be reinstated and fixed for hearing and the Tenant be allowed to deposit the rent for the premises in the Tribunal.
10. Upon perusal of the Tenant's Application dated 26th April, 2024, the Tribunal, on 9th May, 2024, directed the matter be fixed for hearing on 11th June, 2024.
11. In response to the Tenant's Applications dated 19th September, 2022 and 26th April, 2024, the Landlord filed a Replying Affidavit and a Notice of Preliminary Objection both dated 5th July, 2024.
12. The Honourable Tribunal, on 8th July, 2024, directed the parties to file Submissions. The Landlord filed her Submissions on 17th July, 2024 in support of the Notice of Preliminary Objection dated 5th July, 2024 while the Landlords filed his Submissions on 24th July, 2024.
13. It is therefore the Landlord's Notice of Preliminary Objection dated 5th July, 2024 that is the subject of this Ruling.

C. Landlord's Case

14. The Landlord avers that there no longer exists a tenancy relationship between herself and the Tenant, as the Tenant vacated the suit premises on 1st June, 2024 per the Notice to Terminate the tenancy dated 13th March, 2024. She contends that this Honourable Tribunal therefore lacks jurisdiction to determine the subject of the Tenant's Applications as there exists no tenancy relationship between her and the Tenant.

D. Tenant's Case

15. The Tenant affirms that at the time reference was filed, he was Tenant of the suit premises. He avers that at all material times relevant to the Reference herein, there existed a Tenancy relationship between the parties herein.

E. Jurisdiction

16. The Jurisdiction of this Honourable Court has been contested by the Landlord vide a Notice of Preliminary Objection dated 5th July, 2024.
17. It is the Landlord's contention that currently there exists no tenancy relationship between the parties herein as the Tenant has since vacated the premises. The Notice of the Preliminary Objection is premised on Section 2(1) as read with Section 12 (1) (a) and 12 (4) [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), Cap 301, Laws of Kenya.



F. Issues For Determination

18. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the sole issue for determination is: Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.

G. Analysis And Findings

i. Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.

19. This Honourable Tribunal has the duty to interrogate the question of jurisdiction and satisfy itself before making any further step in line with the celebrated case of Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited [1989] eKLR where the Court of Appeal held as follows:

“I think that 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...”

20. In the matter herein, it is the Landlord's contention that the consequence of the Tenant vacating the premises was that it extinguished the tenancy relationship between the parties herein and subsequently, the jurisdiction of this Honourable Tribunal as provided under Section 2 of Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya. Additionally, the Landlord contends that the Notice of Preliminary Objection is founded on a question of jurisdiction as set out by the Court in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors (1969) EA 696, where the court stated that:

“Consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings...Examples are an objection to the jurisdiction of the Court, or a plea of limitation...”

21. In response, the Tenant notes that the Reference herein was filed during the pendency of the tenancy relationship between the parties herein. As such the Reference was properly filed and thus this Honourable Tribunal has the jurisdiction to hear and determine it.
22. A Notice to vacate a premises does not oust the jurisdiction of this Honourable Tribunal as such ouster can only take place once all pending matters before the Tribunal have been resolved. As such, it is crucial to assess the reference and the subsequent pleadings filed herein to establish pending issues in the matter herein.
23. Upon assessment of the Reference and Pleadings filed herein, there are two issues for determination; whether the Tenant's Application dated 19th September, 2022 has been spent and whether there are any outstanding rent owed.
24. I duly note that the prayers sought by the Tenant vide his Reference and Application dated 19th September, 2022 have since been spent as the Tenant moved out of the suit premises. The prayers pleaded for have since been overtaken by events. The tenancy relationship between the parties was severed when the Tenant vacated the suit premises hence he cannot claim the rights accrued to Tenant as prayed in his Application.



25. Similarly, the Landlord's claim for outstanding rent arrears of Kshs. 115,050.00 as at June, 2024 has since been abandoned and/or dropped by the Landlord due to the Notice of Preliminary Objection filed.
26. In light of the above, this Honourable Tribunal notes that all pending issues before the Tribunal have since been dispensed with.

H. Orders

27. In the upshot the following orders shall abide;
- a. The Landlord's Notice of Preliminary Objection dated 5th July, 2024 is hereby allowed;
 - b. The Tenant's Reference dated 19th September, 2022 is hereby dismissed.
 - c. No orders as to costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 28TH DAY OF AUGUST 2024 IN THE PRESENCE OF OTIENO FOR THE TENANT AND RACHAEL MBURU, THE LANDLADY IN PERSON.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

