



**Oboso v Rehamtulla & 2 others (Tribunal Case E165 of 2023)
[2023] KEBPRT 688 (KLR) (1 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 688 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E165 OF 2023
P KITUR, MEMBER
DECEMBER 1, 2023**

BETWEEN

ERASTUS OBOSO TENANT

AND

SHEHNAAR REHAMTULLA 1ST LANDLORD

ZAID ASHRAF REHAMTULLA 2ND LANDLORD

AND

ALFAJIRI AUCTIONEERS AUCTIONEER

RULING

A. Parties And Background

1. The Landlords are the owner of the building erected on property known as Plot Number 615/ XVII.
2. The Tenant herein carries on business on the ground floor of the said building as a Tenant to the Landlors.
3. The Landlords are represented by the firm of A.B. Patel & Patel LLP Advocates.
4. The Tenant is represented by Gichana BW' Omwado & Company Advocates.

B. The Dispute Background

5. The Landlords and the Tenant entered into a Lease Agreement dated 1st May 2021 for premises located on the ground floor (suit premises) of property known as Plot Number 615/ XVII for a term of 5 years and 3 months.



6. The tenancy continued uninterrupted until sometime in June 2023 when the Landlord, through the Auctioneer herein commenced the process of distress for rent.
7. The Tenant thereafter proceeded to file a complaint against the Landlord under s. 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, cap 301.
8. The Landlord additionally filed an Application dated 4th July 2023 with the following prayers;
 - i. That this application be certified as urgent and be heard ex parte in the first instance.
 - ii. That pending the hearing of this application inter-parties the Honourable Tribunal court be pleased to issue a Temporary prohibitory order Restraining the Landlords/ Respondents by themselves, its agents (including Alfajiri Auctioneers, employees servants and /or hirelings and or assignees from removing and/or carrying away, selling, evicting or in any other manner from interfering with the applicants quiet enjoyment of the premises.
 - iii. That the Honorable tribunal to please order restraining the Respondent/landlords by themselves agents including (Alfajiri Auctioneers), employees or servants and/or assignee's in from Evicting, victimizing, harassing or in any way whatsoever interfering with the applicant's quiet enjoyment of the tenancy in the stated premise pending hearing and determination of this suit.
 - iv. That the orders be supervised by O.C.S Makupa Police station.
 - v. That the costs of this application be borne by the Landlords/Respondents.
9. In response, the Landlord filed a replying affidavit sworn on 5th September 2023 alongside a Notice of Preliminary objection dated 31st August 2023 raising the following points of law;

TAke Notice that the Respondent herein, will, at the commencement of the hearing of the Applicant's Notice of Motion Application dated 4th July 2023 raise a Preliminary Objection to the effect that this Tribunal has no Jurisdiction to hear, investigate any complaint and determine this matter as the tenancy of this premises does not fall within the purview of Section 2(1)(b) of the Landlord and Tenant (Shops Hotels and catering Establishments) Act Cap 301.

Pursuant to the above provision, the Reference as against the Respondents ought to be dismissed with costs.
10. Parties took directions and agreed to dispose of the Notice of Preliminary Objection by way of Written Submissions which were duly filed.

C. List of Issues For Determination

11. Having given full consideration to the preliminary objection raised, the issue for determination is;
 - i. Whether this Tribunal has Jurisdiction to hear and determine the matter by dint of section 2 of the *Landlord and Tenant (Hotels, Shops and Catering Establishments) Act*.

D. Analysis And Findings

12. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to down its



tools where want of jurisdiction is deemed or assumed not to exist. In the case of Owners of the Motor Vessel 'Lillian' (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion

13. The question therefore arising is whether there exists a tenancy relationship between the Tenant and the Landlord subject to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.
14. Under Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, a 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 date thereof OR
 - iii. Relates to premises of class specified under subsection (2) of this section.
15. The Lease availed before this Tribunal shows that the Tenancy is to run for a period of 5 years and 3 months. The same also does not contain a termination clause otherwise than for breach of covenant at any time during the pendency of the Lease.
16. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of Pritam vs. Ratilal and Another Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was 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 provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”
17. From the foregoing, the Tenancy herein cannot be termed as a controlled tenancy, which therefore ousts this tribunal’s jurisdiction to hear and determine the dispute.
18. I therefore proceed to order as follows;

E. Orders

- a. The Landlord’s preliminary objection is hereby upheld.
- b. The Tenant’s Reference and Application both dated 4th July 2023 are hereby dismissed for want of jurisdiction.
- c. Costs are awarded to the Landlord.



**RuLING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 1ST DAY
OF DECEMBER 2023**

HON P. KITUR

BUSINESS PREMISES RENT TRIBUNAL

In the presence of;

Baraza for the Landlord

