



**Bet Mbao Limited v Amuru (Tribunal Case E510 of 2024)
[2024] KEBPRT 830 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 830 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E510 OF 2024
A MUMA, MEMBER
JUNE 19, 2024**

BETWEEN

BET MBAO LIMITED TENANT

AND

DAVID GITONGA AMURU LANDLORD

RULING

A. Parties and their Representatives

1. The Applicant, Bet Mbao Limited, is the Tenant of the suit premises Shop No. 3 on the Ground Floor of Aturi House located along River Road erected on Property Title Number Nairobi/Block 28/230 Nairobi (the “suit property”) belonging to the Respondent herein.
2. The Firm of Ken, Daniel & Henry Advocates appear for the Tenant in this matter.
3. The Landlord, David Gitonga Amuru, is the registered proprietor of the suit premises and hence the Landlord of the suit premises.
4. The Firm of Muthomi & Karanja Advocates represents the Landlord in this matter.

B. The Dispute Background

5. The Tenant moved the Tribunal vide a Reference and Application evenly dated 30th April 2024 challenging the notice of termination of tenancy served upon it by the Landlord in respect of the suit premises and requesting that this Tribunal investigates the issues involved and determines the matter.
6. Having considered the Tenant’s Application, this Court issued interim orders dated 2nd May 2024 certifying the matter urgent and restraining the Landlord from evicting the Tenant or terminating the tenancy in any manner whatsoever. Further, the Tribunal ordered that the Tenant serves the aforementioned Reference and application for interpartes hearing on 15th May 2024.



7. In response to the Application, the Respondents filed a Notice of Preliminary Objection dated 14th May 2024.

C. Jurisdiction

8. The jurisdiction of this Tribunal is in dispute.

D. Claim & Defence

9. The Tenant claims that it entered into a lease agreement with Winnie Wangoru in respect of the suit premises on 23rd September 2020 for a term of Five (5) years but the Landlady has since transferred the suit premises to the Landlord herein, which transfer was registered on 15th April 2024.
10. The Tenant indicates that upon the aforementioned transfer, the Landlord issued a termination notice with the intention of evicting them citing the need to reconstruct the premises.
11. It is the Tenant's case that they responded to the notice of termination vide a letter dated 24th April 2024 indicating that they do not intend to comply with the notice because they believe the Landlord's reason for termination is not backed by any evidence of his intention to reconstruct the premises.
12. In its submissions dated 30th May 2024, the Tenant submits that it is entitled to the protection of this Tribunal and that the Notice of Preliminary Objection dated 14th May 2024 does not raise a pure point of law and should therefore be dismissed.
13. On the other hand, the Landlord has challenged the jurisdiction of this Tribunal to hear and determine this matter on the grounds that there is no controlled tenancy relationship between him and the Tenant herein.
14. Further, the Landlord claims that the lease agreement between the Tenant and the former landlady is unenforceable against him as it offends the principle of privity of contract and denies him locus to be sued therein.

E. Issues for Determination

15. I have carefully perused documents placed before this Court by both parties. It is my considered view that the following issues fall for determination:
- a. Whether this Tribunal has the requisite jurisdiction to hear and determine this matter.
 - b. Whether this Tribunal should grant the orders sought.

F. Analysis and Determination

a. Whether this Tribunal has jurisdiction to hear and determine this matter

16. The Tenant sought the intervention of this Court which intervention has been challenged by the Landlord on the basis that this Court lacks the requisite jurisdiction to hear and determine the matter on the basis that there exists no tenancy relationship between him and the Tenant.
17. In the locus classicus case of Owners of the Motor Vessel "Lilian S" v. Caltex Oil (Kenya) Ltd. (1989), the Court pronounced itself on the issues of jurisdiction as follows:

"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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a Court takes upon itself to exercise jurisdiction it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

18. Based on the above, it is evident that this Tribunal must establish whether or not it is clothed with the jurisdiction to hear and determine the issues raised in the Tenant’s Reference and Application.
19. The jurisdiction of this Tribunal is derived for the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 Laws of Kenya which is an Act of Parliament enacted to make provision with respect to certain premises for the protection of tenants from illegal eviction and from exploitation and matters connected therewith.
20. Section 12 (4) of Cap 301 provides that, the Tribunal, in addition to any other powers specifically conferred on it by or under this Act has power to investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.
21. It is noteworthy that the basis of the exercise of jurisdiction is the existence of a controlled Tenancy. Section 2 of Cap 301 defines a controlled tenancy as:

A tenancy of a shop, hotel or catering establishment-

- a. Which has not been reduced into writing
 - b. Which has been reduced into writing and which-
 - i. is for a period of five years; or
 - ii. contains a provision for termination, otherwise that for breach of covenant, within five years from the date of commencement; or
 - iii. relates to premises of a class specified under subsection (2) of this Section.
22. Based on the above provision, it is clear that the tenancy relationship herein is a controlled tenancy which should be terminated in line with Section 4 of Cap 301. In the circumstances, this Tribunal has jurisdiction to hear and determine this matter. In addition change of ownership does not terminate a controlled tenancy automatically.

b. Whether the orders of eviction sought should be granted

23. The Tenant insists that the Landlord should continue with the tenancy agreement already in existence and that the reason for evicting them is not reasonable as required under Section 7 of Cap 301.
24. This Court notes that both parties have placed documents to show that ownership of the suit premises has changed and that the respondent herein is the new Landlord. Further, this Court notes that despite that existence of an Agreement for Sale and a notification of sale of the suit property, the new landlord indeed issued a notice and the lease appears to be in its home stretch as it ends in the next 6 months it is for this reason that the court is inclined to accept the eviction notice issued and since the Tenant has paid rent till 30th of July 2023 he is entitled to serve till the end of that period.
25. This court understands that upon change of ownership of the property, the new owner has the liberty to continue with the existing tenancy relationships or commence the eviction process following the law



evict them and do as they please with the property in exercise of their right to property under Article 40 of *the Constitution* of Kenya, 2010.

26. I have had a chance to peruse the notice of termination dated 17th of April 2024 and note that the said notice is in conformity with Section 4 of Cap 301 which provides for termination of a controlled tenancy and hence is valid.

G. Orders

27. The upshot is that the Tenant's Reference and Application dated 30th April 2024 is hereby dismissed in the following terms:
- a. The Tenant shall give vacant possession of the suit premises to the Landlord by 31st July 2024;
 - b. The Tenant is at liberty to apply for further directions on refund of rent deposit should they fail to agree; and
 - c. Each party to bear its own cost.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling, dated, signed and delivered at Nairobi by Hon A. Muma this 19th day of June 2024 in the presence of Obunde for the Tenant and Njoroge holding brief for Karanja for the Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

