



**Njoki v Zubedi & another (Tribunal Case 244 of 2019)
[2023] KEBPRT 1208 (KLR) (13 October 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1208 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 244 OF 2019
GAKUHI CHEGE, CHAIR
OCTOBER 13, 2023**

BETWEEN

SUSAN NJOKI APPLICANT

AND

SHEIKHA ABED AWADH ZUBEDI 1ST RESPONDENT

ANNA NYAMBURA WAINAINA 2ND RESPONDENT

JUDGMENT

1. I wish to begin this Judgment with a citation from the case of; *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited* [1989] eKLR at page 8-9 wherein Nyarangi JA (as he then was) had the following to state:-

"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. 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

2. Similarly, in the case of; *Phoenix of E.A. Assurance Company Ltd. v S.M. Thiga t/a Newspaper Service* [2019] eKLR, the Court of Appeal held as follows at paragraph 2:-

"2. In common English Parlance, "Jurisdiction" denotes the authority or power to hear and determine judicial disputes or to even take cognizance of the same. This definition shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be



a nullity ab initio and any determination made by such court, will be amenable to being set aside ex-debito justitiae.”

3. In the case of; *Kenya Ports Authority v Modern Holdings (E.A.) Limited* [2017] eKLR, the Court of Appeal cited with approval its decision in *Adero & another v Ulinzi Sacco Society Ltd* [2002] IKLR 577 on the question of jurisdiction at page 7 as follows:-

- “ 1.
2. The jurisdiction either exists or does not ab initio and the non-constitution of the forum created by statute to adjudicate on specified disputes could not of itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction.
3. Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
4. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.
5. Where a cause is filed in court without jurisdiction, there is no power on that court to transfer it to a court of competent jurisdiction.” (emphasis added).

4. In her witness statement dated 8th March 2023, the Applicant states as follows at paragraphs 7-11:-

- “ 7. That the Respondent went to my shop, cut off my padlocks together with the door latch, went inside, locked the same from inside and left through the back door.
8. Immediately after the said incident, the 2nd Respondent sent me a text message telling me to go and remove my things, forcing me to rush to this Tribunal for the remedy sought.
9. That the said application was heard and the Tribunal issued order on 17.09.2019 directing the Respondents to open my shop and restraining them from evicting me.
10. That immediately that order was served upon the Respondents, they removed my stock to unknown place and hurriedly put new tenants, one Jacinta Waithira Wendwa and Samuel Mathaiya Kariuki.
11. That when the OCS Central police station, Mombasa visited the shop to ensure compliance as was directed, he was surprised to find new tenants. The presence of these new tenants made him decline to put me back into the shop. According to him what he was directed to do had been overtaken by events.”

5. It is the Applicant’s averment that she was eventually reinstated through an order of this Tribunal given in this matter but that she was subsequently removed through an order given in Mombasa CMCC No 350 of 2020 filed by Jacinta Waithira Wendwa and Samuel Mathaiya Kariuki (new tenants) against the 1st Respondent herein.
6. The Applicant therefore seeks for an order to be put back into her shop, that the Respondent hands over her stock in good and saleable condition or alternatively pay her Kshs 2,249,320/= being the



value thereof. She further seeks that the Respondents do pay her the estimated costs of the stock taken away in the second invasion, general damages for loss of business, exemplary damages and costs of the complaint.

7. According to the 1st Respondent's witness statement dated 14th April 2023, the 2nd Respondent was her tenant in the suit premises and had sublet the same without the Landlord's notice which led her to issue a termination notice under Cap 301 on 8th August 2019 on grounds of illegal subletting. The 2nd Respondent did not file a reference and willingly agreed to vacate therefrom and hand over the same to the landlord.
8. The 2nd Respondent handed over the subject premises in vacant possession on 7th September 2019 to the 1st Respondent/landlord and the latter leased it out to another tenant on 9th September 2019 after signing a lease agreement for 5 years 3 months.
9. It is contended by the 1st Respondent that there is no privity of contract between her and the Applicant as she only recognized the 2nd Respondent as her tenant.
10. When the matter proceeded by way of viva voce evidence, both parties confirmed that the Applicant was not in possession of the suit premises and that they had no direct tenancy relationship between each other. The 1st Respondent has throughout the case stated that she did not recognize the Applicant as her subtenant as her consent was never sought before the 2nd Respondent entered into the disputed sub tenancy arrangement. The relationship however no longer subsists.
11. In the case of *Pritam v Ratilal & another* [1972] E.A. 560 at page 562 the superior court stated as follows:-

“As stated in the Act itself, it is an Act of Parliament to make provisions with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this special legislation is to provide extra and special protection for tenants. A special class of tenants is created. Therefore, the existence of the relationship of landlord and tenant is a pre-requisite to the application of the provisions of the Act. Where such a 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 the 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.”

12. I have also noted the decisions in *Farkhandas NurMohamed Abdulkader v Mohamed Hasham Bakarani & another* [2014] eKLR, *Techno Holdings Limited & others v National Social Security Fund Board of Trustees* [2018] eKLR, *Re Hebtulla Properties Ltd.* [1979] KLR and *Jamuto Enterprises Limited v County Government of Meru* [2021] eKLR cited by Counsel for the 1st Respondent and agree with the ratio contained in all of them in so far the question of jurisdiction of this Tribunal under consideration is concerned.
13. I have also read the decisions cited by Counsel for the Applicant in the cases of; *Kamau Mucuba v Ripples Ltd* [1993] eKLR, *Charles Mwangi Kamau v Mohamed Hassan Sheikh Noor* [2005] eKLR and *Rajabali Kassam t/a Giraffe Snack Bar v Total Kenya Ltd* [2003] eKLR and the same constitute good law in so far as issuance of mandatory injunction and award of damages by a court of competent jurisdiction is concerned.



14. In the case of; *Re Hebtulla Properties Ltd* [1979] eKLR, Chesoni J (as he then was) had the following to state on page 9:-

“The tribunal shall.....have power to make orders upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits.....

The “recovery of possession” must here mean and means, recovery of possession by and not from the landlord. The legislature deemed it necessary to empower the tribunal to order recovery of possession by the landlord, if the reverse had been intended, it would have been expressly provided since the intention of the Act is to protect tenants. In my opinion, it is therefore clear that Parliament never intended that the tribunal should have powers to order recovery of possession by a tenant where such possession has been seized by a landlord and it never gave the power to the tribunal. That power cannot be implied. In the premises, ‘forcible taking of possession’ is not a matter within the area of jurisdiction of the tribunal and that being the case, the tribunal cannot investigate any complaint about forcible possession of premises by a landlady, such matter being for the courts. I find that the complaint was outside the area of jurisdiction of the tribunal. Jurisdiction was wanting.”

15. In view of all the foregoing decisions, it is clear beyond any peradventure that this Tribunal has no jurisdiction to determine the issue of forcible eviction of the Applicant nor to grant the reliefs sought by the Applicant which is within the purview of ordinary courts.
16. As regards costs, the same are at the Tribunal’s discretion under Section 12(1) (K) of *Cap 301*, Laws of Kenya but always follow the event. I have every reason to deny costs to the Respondents who are accused of illegal eviction of the Applicant against clear orders of this Tribunal. Awarding them costs will amount to rewarding them for the alleged illegal action. I shall therefore order each party to meet own costs of the case.
17. In conclusion, the following final orders commend to me under Section 12(4) of *Cap 301*, Laws of Kenya:-
- (a) The Applicant’s complaint is hereby struck out for want of jurisdiction.
 - (b) Each party shall meet own costs of the case.
 - (c) This file is ordered closed.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF OCTOBER 2023.

HON. GAKUHI CHEGE

FOR: CHAIRMAN

10.203

In the presence of:-

Hassan for the Landlord

Odongo for the Tenant

