



**Rono v Abdullahi (Tribunal Case E133 of 2023)  
[2024] KEBPRT 642 (KLR) (Civ) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 642 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E133 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MAY 3, 2024**

**BETWEEN**

**ALICE CHERONO RONO ..... LANDLORD**

**AND**

**ABDIKADIR ADOW ABDULLAHI ..... TENANT**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this tribunal vide a Notice of Motion under a Certificate of Urgency dated 15<sup>th</sup> January, 2024 in which he sought the following orders; -
  - I. That the application be certified urgent.
  - II. That pending the hearing and determination of the application inter-partes, there be a stay of execution of the decree and order issued on 11<sup>th</sup> October, 2023 by this court.
  - III. That the court be pleased to set aside the order entered against the tenant on 11<sup>th</sup> October, 2023 and all consequential orders thereon.
  - IV. That the court be pleased to strike out this suit with costs for lack of jurisdiction.
  - V. That the costs of the application be provided for.
2. The tenant filed a supporting affidavit of even date in which he deposes as follows; -
  - i. That the landlady/respondent has obtained orders of eviction against the tenant from property known as PLOT NO. 37-LITEIN TOWNSHIP. A copy of the orders is annexed as “AA1”.



- ii. That the orders issued by the court are about to be enforced against the tenant despite not having been given an opportunity to be heard.
  - iii. That the said orders of eviction issued on 11<sup>th</sup> October, 2023 but served upon the tenant on 13<sup>th</sup> January, 2024 are null as they were issued in absence of jurisdiction as the landlord concealed material information from this court, being that there is a valid lease agreement between the landlord and the tenant, leasing out the suit property for 30 years, thus the relationship herein is not a controlled tenancy and this tribunal lacks the jurisdiction to hear or determine the matter. A copy of the lease agreement is annexed as "AAS".
  - iv. That the tenant was never notified of the filing of this matter or of the hearing date.
  - v. That the tenant only knew of this matter on 13<sup>th</sup> January, 2024 when the landlady tried to evict him.
  - vi. That the tenant is an honest man who has been paying the rent due to the landlord herein.
  - vii. That the tenant will suffer irreparable damage if the judgement is not set aside.
3. On 17<sup>th</sup> January, 2024, the court issued ex-parte orders granting a stay of the orders of 11<sup>th</sup> October, 2023 pending the hearing of the application inter-partes on 13<sup>th</sup> February, 2024.
  4. At the inter-partes hearing on 13<sup>th</sup> February, 2024, in the presence of both parties, the court ordered that the application be disposed of by way of written submissions and the landlord was granted leave to file their response to the application.
  5. The landlord filed her replying affidavit dated 6<sup>th</sup> February, 2024 in which she deposes as follows; -
    - i. That it is true that the tenant/applicant has been a tenant in the premises known as Plot 37 within Litein township since 2011 until July 2023 when the lease agreement was terminated vide a notice to terminate the tenancy. A copy of the said notice is annexed as "ACR-2".
    - ii. That prior to the termination, the applicant became a nuisance to the neighboring tenants and is a consistent perennial rent defaulter which is the reason why the landlord sought to terminate the tenancy agreement.
    - iii. That this court is seized with jurisdiction to issue eviction orders because the lease agreement dated 2<sup>nd</sup> August, 2018 contained provisions for review which provisions were invoked mutually in 2019. That the lease agreement annexed by the applicant as "AA2" was reviewed on 27<sup>th</sup> July, 2019 and a new lease adopted by the parties and consequently the lease agreement dated 2<sup>nd</sup> August, 2018 ceased to be operational and is not binding. A copy of the new lease agreement dated 27<sup>th</sup> July, 2019 is annexed as "ACR-3".
    - iv. That on 18<sup>th</sup> August, 2023, the landlord instructed a process server to effect service upon the tenant and he did so but the tenant chose to ignore the invitation to defend himself and therefore has himself to blame. A copy of the Affidavit of Service is annexed as "ACR-4".
  6. The tenant filed a supplementary affidavit dated 26<sup>th</sup> February, 2024 which the landlord in his written submissions objects to because it was filed in absence of leave of the court. We however refer to the court mention of 12<sup>th</sup> March, 2024, where the counsel for the tenant averred that he had filed his written submissions together with a supplementary affidavit. The landlord's counsel did not challenge the filing of the supplementary affidavit at that point, it is therefore our view that we ought to consider the filed supplementary affidavit.



7. The tenant in his supplementary affidavit dated 26<sup>th</sup> February, 2024 deposes as follows; -
- i. That the alleged service of documents alluded to by the landlady is false as no process server has ever served the tenant with any documents in this matter and the affidavit of service attached by the landlady does not have any annexure to show the document that was allegedly served.
  - ii. That the landlady's affidavit dated 6<sup>th</sup> February, 2024 confirms that this court does not have jurisdiction to handle this matter as the landlady avers that the tenancy between the parties terminated in July, 2023.
  - iii. That the alleged tenancy agreement dated 27<sup>th</sup> July, 2019 is forged and inconsequential as it does not make any reference to or revoke the earlier agreement dated 2<sup>nd</sup> August, 2018 which still remains in force.
  - iv. That upon setting sight of the forged agreement dated 27<sup>th</sup> July, 2019 which is annexed to the landlady's affidavit, the tenant immediately instructed his advocates on record to contact the purported drafter of the agreement one M/s Bii V.K and Company Advocates to ascertain the truthfulness of the said agreement and the said advocate confirmed that there is no agreement for 3 years but rather only an agreement for a term of 30 years. A copy of the tenant's advocate's letter to M/s Bii V.K and Company Advocates dated 16<sup>th</sup> February, 2024 is annexed as "AK1(A)" and a copy of the letter from M/s Bii V.K and Company Advocates is annexed as "AK(B)".
8. This matter was ordered to be disposed of by way of written submissions and both parties filed their written submissions, however the landlord's written submissions filed herein is incomplete and only the filed page shall be considered. We shall consider the written submissions while dealing with the issues for determination.

#### **B. Issues for determination**

9. The following are the issues for determination; -
- a. Whether this tribunal has jurisdiction to determine this matter.
  - b. Whether the tenant is entitled to the orders sought in the application dated 15<sup>th</sup> January, 2024.
  - c. Who shall bear the costs of the application?

#### **Issue (a) Whether this tribunal has the jurisdiction to determine this matter.**

10. The Tribunal's jurisdiction is conferred by the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap. 301, Laws of Kenya in respect of controlled tenancies.
11. In the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. (1989): it was stated 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 it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."



12. The tenant herein has raised a question of jurisdiction in his Notice of Motion dated 15<sup>th</sup> January, 2024 wherein he states that this Tribunal's orders of 11<sup>th</sup> October, 2023 which were served upon him are null as they were issued in the absence of jurisdiction.
13. The tenant further states in his supporting affidavit that there is a valid lease agreement between the parties dated 2<sup>nd</sup> August, 2018, leasing out the property for 30 years and as such, the relationship between the parties is not a controlled tenancy.
14. The landlord in his replying affidavit dated 6<sup>th</sup> February, 2024 refutes this allegation and states that the lease agreement being referred to by the tenant above was reviewed on 27<sup>th</sup> July, 2019 and new terms adopted by the parties and consequently the lease agreement dated 2<sup>nd</sup> August, 2018 ceased to be operational and binding.
15. The tenant in his written submissions avers that the said reviewed lease agreement is forged and that the original lease agreement dated 2<sup>nd</sup> August, 2018 still remains in force. He deposes the same in his supplementary affidavit.
16. We have perused the letter from M/s Bii V.K and Company Advocates, which states that both lease agreements emanated from their office and that the lease agreement dated 27<sup>th</sup> July, 2019 was erroneously typed indicating 3 years instead of 30 years.
17. We have also perused the original lease agreement dated 2<sup>nd</sup> August, 2018 and the disputed reviewed lease dated 27<sup>th</sup> July, 2019 and we find that both lease agreements contain a termination clause as stated in paragraph 10 as follows; -

“10. That in the event either party wants to terminate and/or extend, review the lease he has to give the other Twelve (12) months' notice or reasonable notice as the case may be.” (Emphasis ours)

18. The Tribunal's jurisdiction is conferred by the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya in respect of controlled tenancies in Section 2(1) which defines a controlled tenancy as follows; -

“Controlled tenancy” means a tenancy of a shop, hotel or catering establishment—



(a)	which has not been reduced into writing; or						
(b)	<div>which has been reduced into writing and which—</div> <table> <tr> <td>(i)</td><td>is for a period not exceeding five years; or</td></tr> <tr> <td>(ii)</td><td>contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or</td></tr> <tr> <td>(iii)</td><td>relates to premises of a class specified under subsection (2) of this section.”</td></tr> </table>	(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 commencement thereof; or	(iii)	relates to premises of a class specified under subsection (2) of this section.”
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(iii)	relates to premises of a class specified under subsection (2) of this section.”						
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(ii)	contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or						
(iii)	relates to premises of a class specified under subsection (2) of this section.”						

19. In view of the foregoing provision of the applicable law, it is clear that there is a termination clause in both lease agreements making the tenancy herein to be within the dictates of a controlled tenancy.
20. We find that this Tribunal has jurisdiction to determine this matter as the tenancy herein is a controlled tenancy according to Cap 301, Laws of Kenya.

Issue (b) Whether the tenant is entitled to the orders sought in the application dated 15<sup>th</sup> January, 2024.



21. The tenant approached this tribunal seeking that the eviction orders issued on 11<sup>th</sup> October, 2023 be set aside because the tenant was not properly served and that the court proceeded to issue the said orders ex-parte.
22. The tenant has deposed in his supporting affidavit that he was never notified of the hearing date of this matter and as such did not participate and was not given a chance to be heard.
23. The Tribunal issued a date for inter-partes hearing on 30<sup>th</sup> August, 2023 and on that date none of the parties appeared, thus the Tribunal ordered that the hearing be adjourned to 13<sup>th</sup> September, 2023.
24. On 13<sup>th</sup> September, 2023, only the landlady was present and due to the landlady's challenges with her audio, the Tribunal ordered that the hearing be adjourned to 11<sup>th</sup> October, 2023 and that the landlady files an affidavit of service.
25. The landlady filed a hearing notice dated 29<sup>th</sup> September, 2023 and an affidavit of service dated 9<sup>th</sup> October, 2023. At the court hearing on 11<sup>th</sup> October, 2023, only the landlady was present and the court was satisfied with service in terms of the filed affidavit of service hence allowing the landlady's notice of motion dated 24<sup>th</sup> July, 2023.
26. We have perused the affidavit of service filed and dated 9<sup>th</sup> October, 2023 which is sworn by process server, one Vincent Lelgo who deposes that he visited the respondent's place of work at Litein township within Kericho county, met the tenant at 3.15pm, introduced himself and served the tenant with the hearing notice. That the tenant accepted the service but declined to sign the same. Additionally, the process server in the affidavit of service deposes that he knows the tenant personally.
27. Following the above sequence of events, we find that the tenant chose to ignore invitation to defend himself and that the application herein has no ground to stand on and due process was followed. We shall order that his application be dismissed with costs

**Issue (c) Who shall bear the costs of the application?**

28. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application to the landlord.

**C. Order**

29. In conclusion, the following final orders commend to us; -
    - a. The application dated 15<sup>th</sup> January, 2023 is hereby dismissed with costs.
    - b. All interim orders are hereby discharged.
    - c. Costs of KES. 25,000 to the landlord.
- It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF MAY 2024.**

**HON. JOYCE AKINYI OSODO**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE**



**(PANEL MEMBER)**

**In the presence of:**

**Okiro for tenant**

**No appearance for Landlord**

