



**Maxgame Limited v Sayani Investments Limited & another;
Goldlakes Investments Limited (Interested Party) (Tribunal Case
E426 of 2023) [2023] KEBPRT 1337 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1337 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E426 OF 2023
P MAY, MEMBER
OCTOBER 17, 2023**

BETWEEN

MAXGAME LIMITED APPLICANT

AND

SAYANI INVESTMENTS LIMITED 1ST RESPONDENT

MUVANS LIMITED 2ND RESPONDENT

AND

GOLDLAKES INVESTMENTS LIMITED INTERESTED PARTY

RULING

1. The tenant approached the Tribunal by filing the reference dated 26th April, 2023 seeking the protection of the Tribunal from the respondents. The tenant stated that the tenancy relationship between the parties herein was controlled as it had not been reduced into writing. The tenant also filed a notice of motion on an even date seeking for orders of temporary injunction and an ordered to be allowed to pay rent.
2. The application was placed before the Tribunal on 28th April, 2023 whereby the tenant was granted an order of temporary injunction pending the inter partes hearing. The hearing was set for 21st June, 2023. Before the parties could appear for the said hearing the tenant filed another application dated 15th May, 2023 under certificate seeking for orders to break in to the demised premises pending the said hearing as they claimed that the respondents had failed to comply with the previous orders. The tenant was granted a break in order on 16th May, 2023 pending the earlier set date for inter partes hearing.
3. It was then the landlord's turn on 29th May, 2023 to approach the Tribunal by way of an application under certificate seeking to have the orders issued in favour of the tenant on diverse dates to be set aside



for failure to disclose material facts. The landlord stated that the tenant had misled the Tribunal thus had obtained the orders illegally as they were not entitled to the same since the tenancy relationship had terminated.

4. The interested party made an application seeking to be joined in the proceedings on 19th July, 2023 stating that they had entered into a lease agreement with the landlord over the demised premises thus they had an identifiable stake in the present proceedings. The interested party expressed their frustrations in taking possession of the demised premises in light of the orders that had been issued in favour of the tenant by the Tribunal. This application was allowed by consent on 21/7/ 2023 and the interested party granted an opportunity to participate as a party.
5. The Tribunal caused to be carried out an inspection in the demised premises and an inspection report was filed on 22nd June, 2023. The parties elected to canvass the pending applications by way of written submissions. There has been compliance by all the parties. I will proceed to summarize the case for each party:

Tenant's case

6. From the onset, it was the tenant's contention that the 2nd Respondent sold the business to them as a going concern and they took possession on 4th November, 2023. The tenant stated that it paid rent but could not commence operations as it faced internal wrangles. The tenant accused the 2nd Respondent of instructing the landlord to lock up the premises with the sole aim of evicting them without following the laid down process. They accused the 2nd Respondent of malicious damage to property and also referred the Tribunal to an active suit that had been filed at the Commercial courts over the business ownership.
7. In their submissions, the tenant strongly opposed the landlord's assertion that it was a stranger. The tenant reiterated that the orders it had obtained in its favour were regular and there were no grounds for the setting aside of the same as urged by the Landlord and the Interested Party.

Landlord's case

8. From the onset, the landlord stated that the tenant was a stranger in the demised premises and only gained access through an order obtained from the Tribunal through misrepresentation. The landlord maintained that the tenant had time without number been granted an opportunity to produce evidence to prove their occupation but they had failed to do so. The landlord further stated that the tenant had not produced any proof of payment of rent as envisaged under the law so as to effectively establish a landlord and tenant relationship.
9. The landlord acknowledged that there were squabbles between the 2nd Respondent and the tenant but was quick to point out that it was not a party to the same neither did the same affect his premises. The landlord thus urged the tribunal to down its tools and dismiss the application and the anchor reference.

Interested Party's case

10. The interested party supported the landlord's case by stating that it had entered into a lease agreement with the landlord that should be recognized by the Tribunal. The interested party also claimed that the Tribunal lacked jurisdiction.

Summary of the Inspection Report:

11. The site visit at the demised premises revealed that the same had been closed for a while. The punters who are the target market stated that they were surprised that the premises were opened on that day.



The inspection team concluded that the tenant had not been in possession of the demised premises but only gained entry upon obtaining orders from the Tribunal.

Analysis

12. Having set out the above, it is clear that the Tribunal has to make a determination on whether it is vested with the jurisdiction to hear and determine the present dispute before it can delve into the merits of the pending applications.
13. Jurisdiction is everything and once it is challenged, a determination thereon should be made before the Tribunal can proceed further with the disposal of any matter thereto. Where want of jurisdiction is demonstrated not to exist, the Tribunal has no option but to down its tools and proceed no further.
14. The Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank and another* [2012] eKLR expressed itself on the subject as thus:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

15. The Tribunal has carefully analyzed the parties’ submissions and all documents filed in this Tribunal. It is apparent that there is no evidence showing a tenancy relationship existed prior to the orders issued in favour of the tenant as established above. 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 v 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.”

16. The jurisdiction of BPRT Tribunal was aptly discussed in the case of *Republic v Business Premises Rent Tribunal & another Ex-Parte Albert Kigera Karume* [2015] eKLR which cited with approval the case of *Re Hebtulla Properties Ltd.* [1979] KLR 96; [1976-80] 1 KLR 1195 where the Court dealt with the provisions of section 12 of Cap 301 and stated as follows:

“The Tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied... The powers of the Tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the Tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under section 12(1)(a) to (n). The Act was passed so as to protect tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the Tribunal is to hear and determine references made to it under section 6 of the Act. Section 9 of the Act does not give any powers to the Tribunal, but merely states what the Tribunal may do within its area of jurisdiction..... It would be erroneous to think that section 12(4) confers on the Tribunal any extra jurisdiction to that given by and under the Act elsewhere...Section 12(4) of the Act must be read together with



the rest of the Act and, when this is done it becomes apparent that the complaint must be about a matter the Tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy.... The Act uses the words “any complaint” and the only qualification is that it must be “relating to a controlled tenancy”.

17. This Tribunal derives its jurisdiction from the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, 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. Having established that parties have not adduced evidence to show existence of a tenancy relationship which is a contested issue, I have no option but to down my tools as it was stated in the case of *Owners of the Motor Vessel ‘Lillian’ (s) v Caltex Oil (Kenya) Ltd* [1989] KLR 1, 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 that it is without jurisdiction.

18. Before I pen off, it is important to state that the landlord and the interested parties even though aggrieved complied with the orders of this Tribunal. The tenant took possession of the demised premises during the pendency of the proceedings. This does not create a landlord and tenant relationship as the prerequisites of a contract were not met. Besides a tenant cannot impose themselves on a landlord through judicial craft. The landlord is nonetheless entitled to mesne profits from the month of May.
19. With the above analysis, it is my finding that there being no landlord tenancy relationship, I hereby make the following orders;
- i. The Applicant’s reference dated 26th April, 2023 and notice of motion Application dated on even date are hereby dismissed.
 - ii. The tenant shall forthwith pay the landlord *mesne* profits accrued during the pendency of the proceedings at the rate of Kshs 170,000/= per month to date.
 - iii. The tenant shall forthwith vacate the demised premises failure to which the landlord shall evict with the assistance of the OCS with jurisdiction.
 - iv. The landlord and interested party are each awarded costs to be borne by the tenant assessed at Kshs 75,000/=.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER 2023

HON. P. MAY

MEMBER

17.10.2023

In the presence of;

Wairimu for the Applicant/Tenant

No appearance for the Landlord/Respondent

