



**Imwene v Chairman AP Welfare Committee. Lamu (Tribunal Case
E202 of 2023) [2023] KEBPRT 1123 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1123 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E202 OF 2023
M MAKORI, MEMBER
NOVEMBER 30, 2023**

BETWEEN

MARIAM IMWENE TENANT

AND

THE CHAIRMAN AP WELFARE COMMITTEE. LAMU LANDLORD

RULING

1. This reference was instituted by the tenant/applicant *vide* a notice of motion application dated 21/8/2023. It was opposed by the landlord respondent *vide* a preliminary objection dated 28/9/2023 and a replying affidavit dated 29/9/2023.
2. While the tenant/applicant is a natural person, the respondent/landlord is an association of administrative police welfare association Lamu County and a unit under the National Police Service Unit.
3. Before delving into the merit of the reference, it is important to determine whether I have jurisdiction which has been challenged *vide* the notice of preliminary objection dated 28/9/2023 and filed by the hon. attorney general.
4. In determining whether I have jurisdiction, I wish to interrogate the concept of controlled tenancy as defined in section 2 of *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*;

“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 commencement thereof; or
- iii. relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

5. The operation mandates of this tribunal is always properly invoked when it is concluded that the dispute between a landlord and the Tenant relates to controlled tenancy as defined by the act.
6. 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. It was stated in the case of; [Owners of the Motor Vessel 'Lillian' \(s\) v Caltex Oil \(Kenya\) Ltd](#) [1989] KLR1, 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.

7. 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”.

8. The Court of Appeal recently stated in [Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/ a Newspaper Service](#) [2019] eKLR as follows: -

“... Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a



complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. ...”

9. From the totality of the pleadings it is clear a Landlord-Tenant relationship is established and the only question begging for determination is whether it is a Controlled Tenancy.
10. The Respondent was represented by the Honourable Attorney General which clearly indicates that it's a government entity and as thus falling under the exception provided under section 2 of *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
11. Based on the foregoing, I have no other option rather than downing my tools upon a finding that the tenancy relationship between the tenant/applicant and the landlord/respondent is not a controlled tenancy.
12. In the upshot, I find that the preliminary objection dated 28/9/2023 is meritorious and I as thus strike out the reference dated 21/8/2023 with costs to the Respondent/landlord.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 30TH DAY OF NOVEMBER, 2023

HON. MIKE MAKORI (MR.)

MEMBER

30.11.2023

Delivered in the presence of;

Ms. Imwene – the Tenant present

Mr. Penda for the Landlord

