



**Ngungu v Gakibe; Mugure (Interested Party) (Tribunal Case
E482 of 2023) [2023] KEBPRT 650 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 650 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E482 OF 2023
A MUMA, AG. CHAIR
MAY 12, 2023**

BETWEEN

LUKES KARANJA NGUNGU APPLICANT

AND

MARY WAMBUI GAKIBE RESPONDENT

AND

VIRGINIA MUGURE INTERESTED PARTY

RULING

A. Parties And Representatives

1. The applicant, Lukes Karanja Ngungu was a Tenant who rented space at a shop in Zimmerman Karasani within Plot No. 039 Kasarani for business in the name of Lurah Enterprises (hereinafter known as the 'the Tenant').
2. The Applicant appears in person in this matter.
3. The Respondent, Mary Wambui Gakibe, is the owner and landlord of the suit premises.
4. The Respondent did not enter appearance in this matter.
5. The Interested Party is a subsequent tenant who rented the space in a shop in Zimmerman, Kasarani within Plot No.39 Kasarani running a salon, Nail Spur and Boutique (hereinafter known as the 'the Interested Party').
6. The firm of B.N. Mbuthia & Co. Advocates represents the Interested Party/Tenant in this matter.



B. The Dispute Background

7. The Applicant/Tenant herein was a tenant in the Landlord's premises at Plot No.39 Zimmerman, Kasarani until April 2023 when they were evicted by the landlord.
8. Through a Reference dated 12th May 2023 and a Notice of Motion of even date, the Tenant moved this Honourable Tribunal seeking among other orders that pending the hearing and determination of the reference, the Tribunal restrain the Respondent and her employees/servants from harassing and/or interfering with the Applicant's peaceful operation of business/premises at Zimmerman/Kasarani within Plot No.039 Kasarani, by reopening the shop and reinstating the Applicant pending inter-parties hearing and determination of this suit. Further, that the Applicant be granted leave to continue paying rent as usual at Kshs. 16,000.
9. Vide an Order issued on 19th May 2023, the Tribunal certified the matter urgent, issued an Order for injunction restraining the Respondent from interfering with the Applicant's peaceful operation of the business at the suit premises and as well as in the interim, the Tenant to continue paying rent as usual at Kshs. 16,000 or through the Tribunal in case the Landlord and her agents refuse to accept the same.
10. Upon knowledge of the Orders issued by the Tribunal, the Interested Party, filed an Application dated 30th May 2023 seeking to be joined in these proceedings and to file a response to the Tenant's reference. Further, that pending hearing and determination of the said Application, the Tribunal to vary, vacate and/or set aside the orders dated 19th May 2023 and allow the Interested Party to continue operating her business in the suit premises.
11. Vide an Order dated 31st May 2023, the Tribunal ordered that the Application dated 30th May 2023 be served for hearing on 13th June 2023.

C. Tenant's Case

- a. The Tenant avers that he was a tenant in the suit premises and has been faithful in payment of rent since 2021 until April 2023 when he was forcefully evicted by the landlord.
- b. He deponed that the alleged eviction was unlawful since he was neither served with a genuine and legal notice nor issued with a Court Order from a competent Court to compel him to vacate the suit premises. He deponed that the landlord has failed to provide proper and accurate records for rent payment.
- c. He further stated that he was faithfully paying rent at KShs. 16,000 up to April 2023 when he was evicted.

D. Interested Party's Case

- a. The Interested Party avers that she is the bona fide tenant of the suit premises and has been in actual and physical occupation of the suit premises for the last three months as of 30th May 2023 when she filed the application seeking among other orders, joinder in the proceedings and setting aside of the orders given on 19th May 2023.
- b. She further deponed that upon taking up the suit premises, she undertook repairs and improvements at a cost of Kshs. 60,000.



E. Jurisdiction

- d. The Jurisdiction of this Honourable Court has been contested by the Interested Party vide a Notice of Preliminary Objection dated 9th June 2023.
- e. It is the Interested Party's submissions that the Tenant had already been evicted at the time of lodging this matter and as such the Tribunal lacks the jurisdiction to determine the matter since there exists no Landlord-Tenant relationship.

F. ISSUES FOR DETERMINATION

12. I have carefully perused all the pleadings and evidence presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the following issues are ripe for determination;
 - a. Whether this Honourable Tribunal has jurisdiction to determine this Reference.

G. ANALYSIS AND FINDINGS

a. Whether this Honorable Tribunal has jurisdiction to determine this Reference

13. This Honourable Tribunal has the duty to interrogate the question of jurisdiction and satisfy itself before making any further step in line with the celebrated case of Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited [1989] eKLR where the Court of Appeal held as follows:

"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.

14. As was stated by the Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR:

"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 jurisdiction of the Business Premises Rent Tribunal is governed by the Landlord and Tenant Shops Hotels and Catering Establishments Act Cap 301 Laws of Kenya (hereinafter the Act). The preamble to the Act states that:

"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."

16. Further, according to the Act, the jurisdiction of this Honourable Tribunal is limited to controlled tenancies.
17. It is not in contention that a landlord-tenancy relationship existed between the tenant and the landlord. The Tenant in its Supporting Affidavit stated that he rented the premises and was paying rent at an



agreed rate of KShs. 16,000/-. The Interested Party also contends that the Tenant was a tenant in the suit premises before she, the Interested Party, took possession of the suit premises.

18. It is not in contention that the Tenant was evicted by the Landlord and is not in possession of the suit premises.
19. The Interested Party's contention that the Tribunal lacks jurisdiction to hear this matter is not hinged on whether or not the tenancy between the Landlord and the Tenant is a controlled tenancy, rather it is hinged on the allegation that as at the time the Tenant approached the Tribunal vide his application dated 12th May 2023, he had already been evicted from the suit premises. The Tenant was therefore no longer a Tenant of the Landlord.
20. The jurisdiction of this Honourable Tribunal is derived from the existence of a landlord and tenant relationship. After the tenant was evicted from the suit premises, the Landlord- tenant relationship ceased to exist and as such the tribunal ceased to have jurisdiction over any subsequent dispute.
21. In that regard, I rely on the decision in Republic – vs- Chairperson, Business Premises Rent Tribunal at Nairobi ex-parte Suraj Housing & Properties Limited & 2 Others (2016) eKLR at page 7/11 where the court cited with approval the decision in Pritam – vs- Ratilal & Another (1972) EA 560 as follows: -

“As stated in the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* itself, it is an Act of Parliament to make provision 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 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”. (Emphasis added).

22. This position was buttressed in Michael Gachie Mwarangu v Peter Gichuru Maina & 2 others [2016] eKLR where the High Court stated as follows;

“Citing Narshidas & Co. Ltd (Supra), a tenant faced with an illegal threat of forcible eviction cannot go to the BPRT for an injunction order against the landlord. The tribunal has no jurisdiction. His remedy lies in the civil courts, either the Chief Magistrates Court or the High Court, for a remedy for breach of contract or trespass. Once a tenant is evicted, the BPRT ceases to have jurisdiction on subsequent actions as a Landlord-Tenant relationship ceases to exist. See also Muudia -vs- Lolchoki (1976) KLR 284.”

23. The relationship between the landlord and the tenant having been brought to an end by the eviction that took place in April 2023, this Tribunal jurisdiction was ousted and cannot therefore entertain the tenant's Application and Reference dated 12th May 2023.
24. Having established that this Tribunal lacks the requisite jurisdiction to hear and determine the Tenant's Application and Reference herein, the Tribunal must then down its tools and cannot therefore make any orders sought in the said Application and Reference.



25. I find and hold that upon eviction of the Tenant, the only recourse available to him is to file an ordinary suit before the subordinate court for compensation.

H. Orders

26. The upshot is that the Tenant's Reference and Application dated 12th May 2023 are hereby dismissed with no order as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 27TH DAY OF OCTOBER 2023 IN THE ABSENCE OF THE PARTIES.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

