



Kamairoh & another v Esquire Investments Limited & another (Tribunal Case E1252 of 2023) [2024] KEBPRT 770 (KLR) (28 May 2024) (Ruling)

Neutral citation: [2024] KEBPRT 770 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1252 OF 2023
N WAHOME, CHAIR & J OSODO, MEMBER
MAY 28, 2024**

BETWEEN

TIMOTHY MWIRABUA KAMAIROH 1ST APPLICANT

ROLLER BALLERS 2ND APPLICANT

AND

ESQUIRE INVESTMENTS LIMITED 1ST RESPONDENT

LLYOD MASIKA LIMITED 2ND RESPONDENT

RULING

1. By this Ruling, we committed to give directions on the possible disposal of this matter. That was made necessary by the reality that the Tenant/Landlord's relationship had terminated by what was said to be unavoidable exit of the Tenant from the demised premises.
2. This matter had been originated by the Tenants reference dated 12th December 2023. It was said to be founded on among others Section 12(4) of the [landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) hereinafter "the Act". The Tenant's complaint was that:-
 - a. The Respondents herein have issued threats to evict the Tenant unlawfully.
 - b. The landlord has interfered with the Tenant's peaceful occupation and enjoyment of the premises by varying the terms of the controlled tenancy and instituting new rules and regulations to force the Tenant out of the premises and affect the business of the Tenant.
 - c. The tenant stands to suffer irreparable financial damage if the Respondents are allowed to continue with this campaign of harassment and business sabotage.
3. The reference was accompanied by a Notice of motion of even date. It sought for the following reliefs:-
 - i. spent



- ii. That the respondents be temporarily prohibited and restrained from unlawfully varying terms of a controlled tenancy, pending the hearing and determination of this application.
 - iii. That the Respondents be temporarily prohibited and restrained from unlawfully interfering with the tenant's use of the common area and occupation of the premises pending the hearing and determination of this application.
 - iv. That the respondents be compelled to restore, return all materials for use owned by the 2nd Respondent pending the hearing and determination of this case.
 - v. That the landlord and his agents be compelled to not interfere or attempt to try to force an auction of the Tenant pending the hearing of this application.
 - vi. Costs of the application.
4. On the 15/12/2023, the applicants application was granted in terms of prayers 1, 2 and 4. It is these orders that the Tenant claims were disobeyed by the respondents and the culmination of the notice of termination dated 18/1/2024 to take effect on the 18/3/2024 and the filing of Misc. application No. 1 of 2024 at the High Court in Kajiado. The latter was to enforce the said orders of this tribunal made on the 18th December 2024.
5. On their part, the respondents filed the Replying Affidavits sworn on the 18th March 2024 and the 28th March 2024 and also the notice of preliminary objection dated the 28th February 2024. In essence the respondents questioned the legitimacy of these proceedings as the relationship of the parties as landlord and Tenant had since been terminated.
6. We have perused all the elaborate materials placed before us to include and not limited to correspondences, notices, pleadings and parties respective submissions. In our view, the only issue for determination in this matter is whether this court has the justification to canvass any issue between the parties and on the question of costs.
7. In the case of *Owners of Motor Vessel "Lilian s" – vs- Caltex Oil (Kenya) Ltd* (1989) KLR, it was held by the court of Appeal that:-
- “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 the 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”.
8. Further in the case of *Samuel Kamau Macharia & Another – vs- Kenya Commercial Bank Ltd & 2 Others* (2012) eKLR the Supreme court held that:-
- “A court's jurisdiction flows from either the constitution or legislation or both”.
- The jurisdiction of this court flows Cap. 301 and in particular Section 2(i) thereof.
9. The Act defines a Tenant as:-
- “In relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding and includes a sub-tenant”.



10. It continues to define a landlord as:-

“In relation to a tenancy means the person for the time being entitled, as between himself and the Tenant to the rents and profits of the premises payable under the terms of the tenancy”.

11. Section 2(1) of the [Act](#) further defines a controlled tenancy to mean:-

“A tenancy of a shop, Hotel or Catering Establishments-

a. Which has not 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”.

12. In this matter there is concurrence by both parties that this was a controlled tenancy. There is a draft lease agreement that had been crafted but the same was never executed by the parties. Their relationship was therefore governed by an arrangement that was not in writing squarely within the jurisdiction of this court pursuant to Section 2(1) of the [Act](#).

13. Both parties are also in concurrence that the relationship of Landlord and Tenant as envisaged by the Act was terminated by the 18th March 2024. This was marked by the Tenant evacuating from the suit premises. Obviously not pursuant to the Notice of termination dated 18th January 2024 which has no recognition under the law and therefore of no effect nor consequence.

14. By the Tenant evacuating from the demised premises, the jurisdiction of this court by that action was impeached. This court is therefore called up on to down its tools and take no further step in perpetuation of these proceedings.

15. In the celebrated case of *Pritam – vs- Ratilal and Another* (1972) EA Page 560 the court exhaustively addressed itself on the issue. It held that:-

“Therefore the existence of the relationship of landlord and Tenant is 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”.

16. This issue was also elaborately discussed in [Republic – vs- The Chairman Business Premises Rent Tribunal Exparte Velji Premchad Shah](#) (2012) eKLR where the court held that:-

“Whether or not the Tribunal acted within jurisdiction turns on the status of the relationship between the interested party and the Applicant on the 21/2/2012 when it made the order. On my evaluation of the evidence presented I have found that the Auctioneers had already handed over empty premises to the Landlord. At the time of prosecuting the matter before the Tribunal the interested party state unequivocally that the Landlord had locked the premises. There is evidence that those premises were empty. It would seem therefore that the Applicant had completely dispossessed the interested party. The tenancy had been



terminated and there was no tenancy capable of being preserved by the Tribunal. There was no longer a landlord-Tenant relationship and so the Tribunal acted without jurisdiction”.

17. We need not say more on this issue but to opine that any issues that may arise from the determined relationship between the parties now belong to another province if at all. We would therefore stricken off all the proceedings hereof as this Tribunal lacks the wherewithal to adjudicate over the same.
18. An overall review of the proceedings herein persuades us to order that each party to bear own costs of the proceedings so far undertaken. This is also noting that on commencement of the suit, this tribunal was seized with jurisdiction to adjudicate over the issues then at hand.
19. In the final analysis we make the following orders:-
 - i. That the notice of preliminary objection dated 28th February, 2024 to the effect that this Tribunal has no jurisdiction in this matter is upheld.
 - ii. That each party shall bear own costs of this suit.
 - iii. That this file is ordered closed.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF MAY 2024.

HON NDEGWA WAHOME MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of Mr. Maina for the Respondent and Mr. Mutiso for the Tenant.

HON NDEGWA WAHOME MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL

