



Peter Irungu Muhoro t/a Traqman Investment v Joseph Antony Maina Kiama t/a Josmak Co. Limited (Tribunal Case E472 of 2023) [2023] KEBPRT 1196 (KLR) (17 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1196 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E472 OF 2023
P MAY, MEMBER
NOVEMBER 17, 2023**

BETWEEN

PETER IRUNGU MUHORO T/A TRAQMAN INVESTMENT APPLICANT

AND

**JOSEPH ANTONY MAINA KIAMA T/A JOSMAK CO.
LIMITED RESPONDENT**

RULING

1. The landlord issued the tenant with a notice of termination of tenancy dated 28th February, 2023 in accordance with the provisions of section 4(2) of cap [301](#). The same was supposed to take effect on 1st May, 2023. The tenant did not object nor file a reference to challenge the said notice. The landlord thus approached the Tribunal seeking orders to evict the tenant through the reference dated May 8, 2023. Contemporaneously the landlord filed an application by way of notice seeking for a plethora of orders.
2. The tenant duly entered appearance and filed a notice of preliminary objection which challenged the jurisdiction of the Tribunal on four grounds which included the fact that the assertion that the demised premises was undeveloped factory. As a matter of practice, the preliminary objection took precedence and parties were asked to submit on the same.
3. 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. The tenant, through a notice of preliminary objection dated 23rd June, 2023 challenged the jurisdiction of this Tribunal to hear and determine on this matter, it therefore behooves this Tribunal to make its determination on the issue before it proceeds further.
4. 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”.

5. The BPRT is a creature of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya. The preamble to the statute provides that 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” (emphasis mine).
6. Under Section 2, “controlled tenancy” means a tenancy of a shop, hotel or catering establishment let out under certain conditions. Shop means premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purpose of rendering services for money or money’s worth. “Hotel”, means any premises in which accommodation or accommodation and meals are supplied or are available for supply to five or more adult persons in exchange for money or other valuable consideration. “catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises.
7. The tribunal will only have jurisdiction if the premises is a shop, a hotel or a catering establishment. The situation before me is not very far off from what arose in the case of *Panesar v Balbir* (1972) EA 208. The dispute in that case related to premises used for the purpose of manufacturing furniture. It was held that the premises could not fall under the definition of shop in Cap 301. The Court of Appeal had this to say :-

“There is something termed a lease for manufacturing purposes (S. 106 of the Transfer of Property Act of India) and the lease here was such a lease. The long title to the Act refers only to shops, hotels and catering establishments, not to factories or premises for manufacturing goods.”

8. Mustafa J.A who wrote the unanimous decision further stated as follows:-

“I am also of the view that “Premises occupied ... for the purposes of rendering services for money or money’s worth,” would be applicable to offices like those of advocates,



accountants, manufacturer's representatives, barbers and so forth, and cannot apply to a factory or the suit premises."

9. I am in full agreement with the above. Premises used for manufacturing goods do not fall within the ambit of premises falling under Cap 301. The premises in the present dispute was to be used as a factory. This is an industrial purpose property. It is neither a shop, hotel, nor a catering establishment. I therefore find that the BPRT has no jurisdiction to entertain the dispute and henceforth down my tools.
10. The upshot of the above is that the notice of preliminary objection dated June 23, 2023 is allowed with no orders as to costs.

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

HON. PATRICIA MAY - MEMBER

