



Kirata Africa Limited v Blue Violets Facilities Limited & another (Tribunal Case E175 of 2024 & E1231 of 2023 (Consolidated)) [2024] KEBPRT 873 (KLR) (5 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 873 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E175 OF 2024 & E1231 OF 2023 (CONSOLIDATED)
A MUMA, MEMBER
JULY 5, 2024**

BETWEEN

KIRATA AFRICA LIMITED APPLICANT

AND

BLUE VIOLETS FACILITIES LIMITED 1ST RESPONDENT

KANG'ETHE ENTERPRISES AUCTIONEERS 2ND RESPONDENT

RULING

A. Parties And Their Representatives

1. The Applicant, Kirata Africa Ltd, is the lawful tenant (the 'tenant') of a premise known as suite No. 003 and 004 located on the Ground Floor, LR No. 1/1340 (the suit premises).
2. The firm of Odera and & Partners Advocates represent the Tenant.
3. The 1st Respondent, Blue Violets Facilities (the 'Landlord') is the proprietor of the premises known as Suite No. 003 & 004 on the Ground Floor situated at Blue Violets Plaza on L.R No. 1/1340 Kang'ethe.
4. Enterprises Auctioneers (the "Auctioneer") are enjoined as the 2nd respondent for acting on behalf of the Landlord to distress rent against the Tenant.
5. The firm of Wamuiya Mohammed & CO. Advocates represent the respondents in this matter.

B. Background Of The Dispute

6. On 6th December 2023, the Tenant moved this Tribunal by a way of Reference and Notice of Motion Application under Certificate of Urgency of even date under Section 12(4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishment Act CAP 301. The Tenant sought, inter alia, injunction orders restraining the Respondents by themselves, their agents and/or servants, from breaking into the suit premises, evicting, restricting access, harassing the Tenant and/or their client,



- disconnecting electricity and preventing them from conducting business and/or in any other manner interfering with their tenancy pending hearing and determination of the application inter-parties.
7. Accordingly, the tribunal granted orders restraining the Respondents from breaking into the suit premises, evicting, restricting access harassing the tenant and/or their clients, disconnecting electricity, and preventing them from conducting business pending hearing and determination of the application inter-parties.
 8. The OCS Kilimani police station was directed to ensure compliance of the orders granted to avoid a breach of peace.
 9. The Tribunal directed for inter-partes hearing on 29th December 2023.
 10. In response to the Tenant's Application, the Landlord filed a Notice of Preliminary Objection (the P.O), dated 18th December 2023, on ground that the Tribunal Lacks Jurisdiction to determine Applicant's Notice of Motion as the subsisted tenancy between the Landlord and the Tenant is not a controlled tenancy under section 2 of Cap 301.
 11. The Landlord attached relevant authorities to support the P.O and prayed that the tenant's Application and Reference be struck out and dismissed with costs and requested that the P.O be heard first.
 12. Consequently, the Tribunal on 26th December 2023, ordered that the P.O be heard first and directed the Landlord to put on submission of the P.O in 14 days and the Tenants to respond in 14 days. The Tribunal further directed that the tenant to deposit rent for December, January and February in tribunal before 6th February 2024.
 13. This Tribunal on 6th February 2024, in absence of the Tenant, made orders allowing the P.O, dismissed the Tenant's Application and Reference with cost for want of prosecution, for lack of jurisdiction and closed the file.
 14. After the ruling by this honorable tribunal on 6th February 2024, the tenant moved this tribunal once again by way of Notice of motion under certificate of urgency dated 7th February 2024 seeking that the respondent be restrained from charging any other rent other than ground rent at the market rate either determined by the tribunal herein, in addition to the prayers in BPRT Case No. E123 OF 2023.
 15. The Tenant requested the tribunal to set aside the orders of 6th February 2024 arguing they were not allowed in digitally and were unable to get the files digitally.
 16. This Tribunal ordered that the status quo be maintained and granted the Tenant orders sought.
 17. In response to the Tenant's Application, the Landlord filed a P.O dated 19th February 2024, on ground that the matter herein is res judicata as it has previously been heard and determined by this very court in BBPRT 1231 of 2023.
 18. On 7th March 2024, the Tribunal ordered that BPRT File 1231 of 2023 be placed together with the subject file for determination of the P.O with BPRT 1231 as the Lead File.

C. Issues For Determination

19. Having carefully perused the Applications and the Responses presented by the parties, it is therefore my respectful finding that the issue for determination before this Honorable Tribunal are:
 - a. Whether this court has the requisite jurisdiction to hear and determine this matter.



D. Analysis And Determination

a. Whether this Tribunal was justified to dismiss Application BPRT E1231 OF 2023 for Lack of Jurisdiction

20. Before delving into the question of jurisdiction which is the subject issue for this ruling, it is important to point out an issue on res judicata had been raised by the landlord through a P.O dated 19th February 2024 and responded to by the tenant through a verified affidavit dated 12 March 2024.
21. This tribunal had however directed that the Application dated 2nd April 2024 be reheard afresh hence the matter herein is not res judicata. On that note, we therefore proceed with the question of jurisdiction.
22. Guided by the locus classicus in Lillian S' v Caltex Oil (Kenya) Limited, Civil Appeal No 50 of 1989, [1989] eKLR this Tribunal acknowledges that jurisdiction is everything and once challenged, a determination thereon should be made before the Tribunal can proceed further with the disposal of any matter thereto.
23. The Respondent, from the onset of the suit, through a P.O dated 18th December 2024, challenged the jurisdiction of this tribunal on the ground that the Tenancy relationship between the Landlord and the Tenant being a Tenancy of 5 years and 3 months, is not a controlled Tenancy under Cap 301.
24. It is not in dispute that the lease agreement dated 28th June 2022 between the Landlord and the Tenant, was for a period of 5 years and 3 months, as stated therein in clause 11 of the Lease Agreement, neither is it in question, as to whether there existed a Tenancy relationship between the parties.
25. This Tribunal is guided by section 2 of Cap 301 which establishes the criteria for determining of existence a controlled tenancy. It provides that:

“Controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- a. Tenancy relationship not reduced into writing
 - 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:
26. This Tribunal finds that the Landlord and the Tenant has a tenancy of a period exceeding five years being a tenancy of 5years and 3months in accordance with Clause 11 of the accepted Letter of Offer of Lease dated 28th June 2022. The accepted Letter of Offer of Lease does not contain any provision on termination of the lease within five years from the commencement if the tenancy relationship.
 27. In accordance with section 12(1) of the Act, this tribunal has the power to determine whether or not any tenancy is controlled tenancy. Consequently, I find that the existing tenancy relationship does not meet any of the requirement under section 2 of Cap 301 and thus cannot be classified as a Controlled Tenancy.
 28. This Tribunal lacks jurisdiction in respect to the matter before it and must down its tools.



29. Consequently, the Tenant's Application and Reference dated 7th February 2024 is hereby dismissed entirely with costs for lack of jurisdiction.
30. The orders shall apply to both E175/2024 and 1231/2023

RULING DATED, DELIVERED AND SIGNED BY HON. ANDREW MUMA AT NAIROBI ON THIS 5TH DAY OF JULY 2024 IN THE PRESENCE OF CHEPKEMOI FOR ODERO FOR THE TENANT AND KOECH FOR THE LANDLORD.

HON A. MUMA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

