



**Moran Lounge & Grill v Level One Holdings Limited (Tribunal Case  
E491 of 2024) [2024] KEBPRT 986 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 986 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E491 OF 2024  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
JULY 9, 2024**

**BETWEEN**

**MORAN LOUNGE & GRILL ..... APPLICANT**

**AND**

**LEVEL ONE HOLDINGS LIMITED ..... RESPONDENT**

**RULING**

1. Before considering the merits of this case, an issue of jurisdiction arises as follows; -
  1. The landlord/applicant moved this tribunal vide a reference under Section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 24<sup>th</sup> April, 2024 with a complaint that the tenant had breached its obligation in paying rent whenever it falls due under a lease agreement dated 3<sup>rd</sup> November 2022 executed by both parties for the months of May – November 2023.
  2. Following the above complaint, the landlord/applicant filed a Notice of Motion under a certificate of urgency of even date seeking that this Tribunal issues orders of distress for rent pending hearing and determination of the application.
2. We have perused the lease agreement between the parties herein which is annexed as “SMM-1” and dated 3<sup>rd</sup> November 2022 and we find that the said lease agreement is for a period of 5.5 years from 1<sup>st</sup> January 2023 and has no termination clause.
3. The Tribunal’s jurisdiction is conferred by the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap. 301, Laws of Kenya in respect of controlled tenancies.
4. Section 2(1) of [Cap 301](#), Laws of Kenya defines a controlled tenancy as follows; -

“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.”
5. In view of the foregoing provision of the applicable law, it is clear that the tenancy herein is not a controlled tenancy as the lease agreement is for a term of 5.5 years from the lease commencement date without a termination clause and therefore the Tribunal lacks jurisdiction to hear or determine this matter.
6. Although the issue of jurisdiction has not been raised by either party before us, we are entitled to consider it on our own motion at any stage of the proceedings in line with the Court of Appeal decision in Jamal Salim v Yusuf Abdulahi Abdi & another Civil Appeal No. 103 of 2016 [2018] eKLR where it was stated as follows: -
- “Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in Adero & Another v. Ulinzi Sacco Society Limited [2002] 1 KLR 577, as follows;
- 1) .....
  - 2) The jurisdiction either exists or does not *ab initio* ...
  - 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
  - 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”
7. Consequently, this Tribunal has no option but to down its tools in line with the locus classicus case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989) eKLR where it was held as follows at pages 8-9/27: -
- “..... 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”.
8. We therefore find and hold that this Tribunal has no jurisdiction to hear and determine the instant dispute and the same is a candidate for striking out.

## Orders

9. In conclusion, the following final orders commend to us;



- a. This matter is struck out for want of jurisdiction.
  - b. The landlord is at liberty to file the matter in the appropriate forum.
- It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> JULY 202**

**HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)**

**HON GAKUHI CHEGE - (MEMBER)**

**BUSINESS PREMISES RENT TRIBUNAL**

In the presence of:-

Mugo for the tenant/respondent

Ms Mbithe for the Landlord/applicant

