



**Maina v Mufadhal & 4 others (Tribunal Case 108 of 2023)
[2023] KEBPRT 1169 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1169 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 108 OF 2023
N WAHOME, MEMBER
SEPTEMBER 20, 2023**

BETWEEN

WINNIE NJERI MAINA TENANT

AND

MUFADHAL & 4 OTHERS LANDLORD

RULING

1. The tenant/applicant in this matter raised a preliminary objection to the jurisdiction of this court to deal with the matters beforehand in her applications dated the 15/8/2023 and 22/8/2023.
2. In response, the Respondent's/Landlord's by the replying affidavit sworn on the August 31, 2023 vouched for the jurisdiction of this court to arbitrate over the matters before it.
3. The preliminary objection was set down for hearing on September 7, 2023 and the counsels for both parties namely; Mr. Masore for the Tenant and Mr. Hamza for the Landlord did render oral submissions in support of their respective and conflicting positions on the question of jurisdiction or lack of the same by this court to hear and dispose off this matter.
4. The position of the Tenant is that:-
 - a. That this court plainly lacks jurisdiction to hear this matter as no relationship of a Tenant and landlord exists as envisaged by chapter 301 of the Laws of Kenya.
 - b. That there exists a tenant/landlord relationship between the tenant and one Gullamabbas Mulla Karimjee in whose premises she operated her business and also paid her rental obligations.
 - c. The Tenant annexed a lease instrument between herself and alleged landlord dated January 31, 2023 together with documents to evidence payment of rent to him.



- d. That the said Gullamabbas Mulla Karimjee did not require to own the land namely title No. Mombasa/Block XVII/565 to qualify as a landlord on the demised premises.
 - e. The tenant referred the court to the following cases:-
 - i. [*KPA v Modern Holdings \(EA\) Limited*](#) [2017] eKLR
 - ii. [*Owners of Motor Vessels Lilian "s" v Caltex Oil \(K\) Ltd*](#) [1989] eKLR; and
 - iii. [*Kaka Mohamed v Mohamed Ali*](#) [2018] KLR.
 - f. This court was consequently asked to down its tools and recuse itself from any further address to this matter.
5. The landlords on their part, argued through counsel Hamza that this court is clothed with the requisite jurisdiction to exhaustively superintend over this matter in totality.
 6. The landlords argued as follows in support of their case:-
 - i. They were the registered owners of the property on which the demised premises are housed namely Mombasa/Block XVII/565.
 - ii. That the tenant has been paying rent to them until May 2023.
 - iii. That the previous Advocates for the tenant had on several occasions and in writing admitted being a Tenant to the landlords herein.
 - iv. The landlord purported by the Tenant was not a party in this proceedings and that the Tenant had not sought to make him such a party.
 - v. The landlord therefore sought to have this court hear and dispose of this matter.
 7. From the pleadings filed herein and the submissions by counsels of both parties, I have retired and deeply looked into this issue of jurisdiction as raised.
 8. At the outset, I agree that:-

“As invoked by the Supreme Court of Kenya in the case of; [*Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others*](#), a court can only eferase that jurisdiction that has bee donated to it by either the [*Constitution*](#), legislation or both. Therefore, it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
 9. In the case of; the [*Owners of the Motor Vehicle lilian "S" vs Caltex Kenya Limited*](#) (1989) KLR 1 the court stated thus:-

“Jurisdiction is in the end everything. Since it goes to the very heart of a dispute. Without it, the court cannot entertain any proceedings and must down its tools.”
 10. In the case of; [*Adero & another v Ulinzi Sacco Society Limited*](#) (2002) 1 KLR 577, the court addressed jurisdiction as follows:-

“Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on Appeal.”



11. There is therefore no doubt that jurisdiction is the engine and the heart, that drives any judicial proceedings.
12. This issue of jurisdiction was raised as a preliminary objection and was incorporated in both the Tenants applications dated August 15, 2023 and August 22, 2023. On this, I draw jurisprudence from the case of:-
 1. *Mukbisa Biscuits Manufacturers Ltd v Westend Distributors Ltd* (1969) 696. Here the court determined that:-

“A preliminary objection is in the nature of what used to be demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the Other Side Are Correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of a preliminary objection does nothing but increases costs and unnecessarily confuse the issues. The court considers that this improper practice should stop.”
 2. *Nazions (K) Ltd vs China Road Bridge Corporation (K)* (2201) 2 EA 502
The court determined that:-

“A preliminary objection is a pure point of law which is resolved without considering the merits of the application before the court.”
13. From the foregoing, there is no dispute on the place of a court being seized with jurisdiction in proceedings before it. It is also clear that a preliminary objection will only suffice and be available to a party when there is convergence and certainty of facts as pleaded.
14. In the present case, parties are in conflict in all areas starting with the Title to the property where the tenant refer to the same as Mombasa/Block XXVII/565 whereas the landlords have annexed in their affidavit Title No. Mombasa Block XVII/565.
15. The tenant claims one Gullamabbas Mulla Karimjee as her landlord whereas the landlords claim to have been receiving rent to the demised premises from the Tenant until May 2023 when she abruptly stopped remitting such rents.
16. The Tenant has disowned letters by an officer of this court namely; Advocate Michael Ngure whereas the Landlords have sworn that they dealt with the said Advocate as a representative of the Tenant.
17. It is therefore plain that this is not an issue that can be resolved by way of a preliminary objection as there is no convergence or any issue between the parties.
18. The jurisdiction of this court as conferred by sections 2 and 12 of [Cap 301](#) is sought to be ousted for the sole reason that the landlords herein are not the actual landlords for the Tenant. I find this untenable in view of the letters by Advocate Michale Ngure and the faint denial of the same by the Tenant.
19. Furthermore, the purported landlord One Gullamabbas Mulla Karimjee remains a landlord at large and has not shown any interest in this matter despite an order of this court directing payment of rent at an increased amount of Kshs. 50,000/= from the initial Kshs. 15,000/= made on the 11.5.2023.
20. The purported landlord has further not taken any interest on the order issued on the September 7, 2023 requiring the deposit of all the accruing rents into this court. By the time of writing this ruling neither had the Tenant nor Mr. Gullamabbas sought for the later to be enjoined in this proceedings.



21. I have no doubt at all in my mind that indeed Mr. Gulamabbas could be a landlord despite not owning title No. Mombasa/Block XVII/565. Indeed the courts have decided on this issue on several occasions in the case of:-

Ramadahn Mohamed Ali

vs

Hashim Salimi Ghanim

Mombasa Civil Appeal No. 32 Of 2013

Justice J. Anyara Emukule had this to say;

“Ownership is not an issue that is relevant under the landlord and Tenant (shops, Hotels and Catering Establishments) Act (Cap 301, Laws of Kenya)

The court went ahead to state that:-

“Indeed there is legal merit in the argument of counsel for the Respondent, that with the said Act, even a “Tenant” can be a “Landlord”. This has been common practice in Commercial lettings where there is an “Anchor Tenant” and many “such Tenants” with the Anchor Tenant.”

22. I have also looked at the case of; [*Kaka Mohamed v Mohamed Ali*](#) (2018) eKLR. The same is very distinct from the present set of facts and circumstances. In retrospect, the Kaka Mohamed case comes in, in aid of the landlords herein. The court at paragraph 48 determined thus:-

“I think it is clear now, that the defendant cannot start pointing to another person as his landlord, having dealt with the plaintiff as his landlord in the first place. He cannot also raise the issue of lack of title on the

on the part of the plaintiff. The applicable law is against all this.

23. The orders that commend themselves to me are therefore the following:-

- i. The preliminary objection as raised by the Tenant in her notices of motion dated August 15, 2023 and August 22, 2023 is hereby dismissed as lacking in any merit with costs to the landlords.
- ii. That for avoidance of doubt, this court has the requisite jurisdiction as conferred by the [*Constitution*](#) and chapter 301 of the laws of Kenya to hear and conclusively dispose of this matter.
- iii. That the rents ordered paid into this honourable court by the order made on the September 7, 2023 shall now be released to the landlords and the tenant will continue paying such rents at Kshs. 30,000/= per month as and when they accrue pending the hearing of the applications herein.
- iv. That the applications dated August 15, 2023 and August 22, 2023 shall be heard together in compliance with the directions issued on the September 5, 2023.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF SEPTEMBER 2023

HON. NDEGWA WAHOME, MBS

MEMBER



In the presence of;

Mr. Masove for the Tenant/Applicant

Mr. Hamza for the landlord/Respondent

