



**Nacheri v Mwamote (Tribunal Case E712 of 2023)
[2024] KEBPRT 695 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 695 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E712 OF 2023
N WAHOME, MEMBER
APRIL 24, 2024**

BETWEEN

MATHIAS NACHERI TENANT

AND

ANN MWAMOTE LANDLORD

RULING

1. This Ruling is on the Application dated 5.1.2024. In it, the Applicant sought that his suit be reinstated and for an order directed at the Respondent to permit him to a “peaceful vacating of the premises with all his goods and properties.”
2. The Application was triggered by the dismissal of the Applicant’s Reference and Application thereof dated 22.07.2023, the Tenant wondered loudly why this matter was still in court. His position was that he had paid all rents in arrears and wanted to be allowed to vacate from the demised premises.
3. On her part, the Landlord contended that all the items in the demised premises which was a hotel belonged to her. She claimed to have bought the same from the previous Tenant. She further asserted that the Applicant still owed her Kshs. 36,000/= in rent arrears. She however further contended that she had since installed another Tenant in the premises pursuant to the orders of this court made on the 9.10.2023. The new Tenant was Catherine Kavesa and took up the premises on the 1.11.2023 as per the lease agreement of the same date.
4. With both parties having admitted before this court that the Tenant had vacated the demised premises as early as 29.8.2023, I doubt that there exists a landlord/Tenant relationship between the parties capable of being adjudicated by this court under the Landlord and Tenant (Shops, Hotels and Catering Establishments Act (Cap 301).



5. In the case of; Pritam vs Ratilal & Another [1972] EA the court held that;-

“Therefore the existence of the relationship of Landlord and Tenant is a 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 Application of the Act is 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.”

6. The upshot of this is that this Tribunal has no jurisdiction to preside over the issues herein. They belong to another province. I would therefore proceed to dismiss the Applications dated 5.1.2024 and 22.7.2023 and also the Reference of the later date.

7. On costs, the Applicant brought this matter to court but decided to treat the same very casually. This can be inferred from the record. On her part, the Landlady blocked the Applicant's access to the premises without the authority of this court or the law. I would therefore determine that each party bears own costs.

8. In the final analysis, I make the following orders;-

- a. That the matter is dismissed for want of jurisdiction.
- b. That each party will bear own costs of the suit.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF APRIL, 2024.

HON. NDEGWA WAHOME, MBS

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of both the Applicant and the Respondent

