



Kanja v Kanja (Tribunal Case E095 of 2023)
[2023] KEBPRT 713 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEBPRT 713 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E095 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
DECEMBER 14, 2023

BETWEEN

DISHON RUKWARO KANJA APPLICANT

AND

PURITY KAGURE KANJA RESPONDENT

RULING

A. The Dispute Background

1. The Tenant/Applicant moved this Tribunal vide a reference dated 25th August 2023 under Section 12 (4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 wherein he complained that the landlord herein had locked the business premises to cause an illegal eviction with no good reason.
2. The tenant also filed a Notice of Motion under a certificate of urgency dated 1st September, 2023 wherein he sought for the following orders;
 - i. That the application be certified as urgent.
 - ii. That the respondent be ordered to reopen the suit premises forthwith and unconditionally.
 - iii. That the respondent by herself, her servants, employees and or her authorized dealers be restrained from harassing, evicting, terminating or in any other manner interfering with his peaceful occupation of the suit premises pending the hearing of the application inter-partes.
 - iv. That the OCS Nyeri Police Station to offer security to the tenant and ensure compliance of the orders.
 - v. That the applicant be compensated for the damages and losses incurred.
 - vi. That costs of the application be borne by the respondent.



3. The application is supported by an affidavit of even date in which the tenant/applicant deposes as follows; -
 - i. That since he started his business in the demised premises, the respondent/landlord has been issuing threats and locking the demised premises without valid reasons and only opens the same upon intervention of the OCS Nyeri Police Station.
 - ii. That the applicant/tenant has no rent arrears and the landlady has been harassing the applicant/tenant to cajole him to vacate the suit premises.
4. On 4th September, 2023 the tribunal issued interim orders of injunction against the landlady/respondent, pending the hearing of the application.
5. The application is opposed vide a replying affidavit dated 11th September, 2023 in which the landlady/respondent deposes as follows; -
 - i. That the respondent herein is the daughter to one Anne Nyaguthii Kanja (Deceased) who is the registered proprietor of LR. No. Block 1/73 comprising of the premises subject matter herein.
 - ii. That no letters of administration have been obtained by either the applicant nor respondent in respect to the estate of the deceased.
 - iii. That the applicant has not shown any evidence that he is a tenant or that he conducts any business in the suit premises and if at all, the same is illegal and unlawful as no consent nor authority has been given by the family members.
 - iv. That it is evident that the applicant has unlawfully sublet the suit premises for his personal gain as the proceeds do not in any way assist the family members to pay rates which have now accumulated to Ksh. 70,000. Copies of demand for current and previous rates are annexed as “PKK 1”, “PKK 2” and “PKK 3”.
 - v. That it is not true that the respondent has been harassing or threatening the applicant and has only been requesting the rent payable to be held in a joint account of all family members to enable them to pay the rates.
6. The respondent simultaneously filed a notice of preliminary objection dated 11th September, 2023 in which she stated as follows; -
 - i. The applicant herein has no locus standi to file the claim in this tribunal since he has not obtained Letters of Administration in respect to the estate of the deceased who is the registered proprietor of the premises.
 - ii. That the applicant is neither a landlord or tenant in the premises.
 - iii. The premises comprised in the estate are family properties and not subdivided.
 - iv. If there is any occupation, the same is unlawful.
7. The applicant filed a further affidavit dated 26th September, 2023 in which he deposes as follows; -
 - i. That the records annexed by the applicant show that the property is owned by the late father Kanja Gikono and that payment of land rates is the responsibility of all the family members including the respondent.



- ii. That before the death of their father, they were allocated a place to venture into business or any other use whereby the respondent took over a dwelling house and office while the applicant solely erected the subject premises for personal business in order to gain income which does not affect the yearly land rates amount to be remitted by the family. The income proceeds he gains from the premises are used to pay the loan that was granted to him to construct on the suit premises.
 - iii. That the applicant has not sublet the demised premises.
8. At a court hearing on 28th September, 2023, the court ordered that the Notice of Preliminary objection and application be canvassed by way of written submissions, and both parties complied with the applicant filing his dated 3rd October, 2023 and the respondent filing hers dated 6th December, 2023. We shall consider the submissions while dealing with the issues for determination; -

B. Issues for determination.

9. The following are the issues for determination; -
- a. Whether there exists a landlord/tenant relationship between the parties herein.
 - b. Whether the applicant is entitled to the orders sought in the application dated 1st September, 2023.
 - c. Who shall bear the cost of the application?

Issue (a) Whether there exists a landlord/tenant relationship between the parties herein.

- 10. The respondent herein filed a Notice of preliminary objection in which she has raised the issue of whether there exists a landlord/tenant relationship in this matter.
- 11. Both parties in their affidavits and submissions have admitted that they are children of the deceased, one Kanja Gakuno and upon perusal of the documents annexed as PKK 1, PKK 2 and PKK 3, it is evident that the suit premises known as LR. No. Block 1/73 is owned by their deceased father.
- 12. There is no evidence to show that either party pays or receives rent in respect of the suit premises, neither is there evidence of a tenancy agreement (written or verbal) between the parties herein.
- 13. 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.
- 14. The term "tenant" is defined under section 2 of *Cap. 301*, to mean: -

“.....the person for the time being entitled to the tenancy whether or not he is in occupation of the holding and includes a sub-tenant”.
- 15. The term 'Landlord' is defined in the same legal provision to mean: -

“.....the person for the time being entitled as between himself and the tenant to the rents and profits of the premises payable under the terms of the tenancy”.



16. In absence of a landlord/tenant relationship between the parties herein, 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”.

17. In the Court of Appeal decision in *Jamal Salim v Yusuf Abdulahi Abdi & another* Civil Appeal No. 103 of 2016 [2018] eKLR, it states 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.”

18. This tribunal cannot adjudicate or determine the issue of land rates payment that has been raised by the respondent in her affidavit and submissions as it does not fall within our jurisdiction.
19. It is therefore clear to us that there exists no landlord/tenant relationship within the meaning and interpretation of Section 2(1) of *Cap. 301*, Laws of Kenya and this Tribunal lacks jurisdiction to adjudicate over the instant dispute.

Issue (b) Whether the applicant is entitled to the orders sought in the application dated 1st September, 2023.

20. The existence of a landlord/tenant relationship is a legal prerequisite to the exercise of jurisdiction by this Tribunal. In absence of such a relationship, the Tribunal has no jurisdiction. (See the case of *Pritam – vs- Ratilal & Another* (1972) *EA* 560 at page 563).
21. In the premises, we find and hold that this Tribunal has no jurisdiction to hear and determine the instant dispute and the same is a candidate for dismissal with no costs. The interim orders given in the matter having been issued in error ought to be discharged/set aside forthwith.

Issue (c) Who shall bear the cost of the application?

22. In regard to costs, the same are always at the Tribunal’s discretion under section 12(1) (k) of *Cap. 301*, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. Both parties shall bear their own costs.



C. Orders

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

- a. The notice of preliminary objection dated 11th September, 2023 is merited.
- b. The application dated 1st September, 2023 is hereby dismissed with no orders as to costs.
- c. The interim orders issued on 4th September, 2023 are hereby discharged and/or vacated forthwith.
- d. Both parties shall meet their own costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF DECEMBER 2023.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(MEMBER)

In the presence of:

Purity Kagure Kanja the Respondent in person.

Karanja Maina for the applicant.

