



**Likuyani v Luvonga & another (Tribunal Case E049 of 2023)
[2024] KEBPRT 781 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 781 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E049 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
JUNE 7, 2024**

BETWEEN

PETER LIKUYANI APPLICANT

AND

SIMON LIJODI LUVONGA 1ST RESPONDENT

LILIAN KAVUKA LIJODI 2ND RESPONDENT

JUDGMENT

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a reference under Section 6 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 29th March, 2023 seeking to challenge a notice to terminate his tenancy.
2. The reference is opposed vide a replying affidavit dated 14th September, 2023 in which the respondents/landlords depose as follows; -
 - i. That on 1st November, 2015, the tenant entered into a lease agreement with Timothy Lijodi Luvonga (deceased) on land Parcel No. ISUKHA/SHITOTO/1229. A copy of the lease agreement is annexed as “LSL-2”.
 - ii. The lease period was for a period of 1 year commencing 1st November, 2015 to November 2016.
 - iii. That it was agreed that the rent would be paid 3 months in advance totaling to KES. 36,000 which was to be paid after every three months.
 - iv. That from the period between 1st November, 2015 to 30th June, 2020 when Timothy Lijodi Luvonga died, the rent was to be paid to the deceased.



- v. That the tenant on several occasions before the demise of the deceased alleged that he was taking care of the deceased hence the said support was allegedly construed by the tenant as rent which was contrary to the terms of agreement.
 - vi. That since 30th June, 2020 to date, the tenant has not remitted rent despite his utilization of the suit premises.
 - vii. That this prompted the respondents to instruct their advocates on record to file and serve a notice of termination of tenancy upon the tenant. A copy of the Notice to terminate tenancy and affidavit of service as annexed as “LSL-3(i)” and “LSL-3(ii)”.
 - viii. That despite previous demands for the settlement of the outstanding rent, the tenant has failed to pay the outstanding sums. Copies of the demand letters dated 29th October, 2021 and 24th January, 2023 are annexed as “LSL-4(i)” and “LSL-4(ii)” respectively.
 - ix. That as at 14th September, 2023, the total rent due for 39 months is KES. 1,092,000.
 - x. That the tenant has come before this court with unclean hands.
 - xi. That the respondents who are heirs of the deceased estate, have suffered huge losses.
3. The applicant/tenant filed a supplementary affidavit dated 21st September, 2023 in which he deposes as follows; -
- i. That the registered owner of the suit premises is deceased having died on 30th June, 2020.
 - ii. That prior to the deceased death, he and the applicant entered into an agreement for sale of land parcel No. ISUKHA/SHITOTO/1229, wherein the deceased sold the entire land to the applicant. A copy of the said agreement is annexed as “PL”.
 - iii. That it is on the basis of the said agreement that the landlord/tenant relationship was terminated as the applicant fully acquired the land together with the developments thereon having paid the consideration in full.
 - iv. That the applicant and the deceased further commenced the land transfer process where the deceased signed the Land Control Board Consent forms together with the transfer forms. Copies of the Land Control Board Consent forms and transfer forms are annexed as “PL 2”.
 - v. That the deceased and the applicant proceeded to the Land Control Board, Shinyalu to obtain the Land Control Board Consent, which the board approved on 12th March, 2020. Copies of Land Control Board receipts and forms are annexed as “PL 2”.
 - vi. That from the above documents, it is clear that the deceased had all the intentions of transferring the suit premises to the applicant after duly paying the purchase price in full.
 - vii. That the applicant is aware that the respondents have taken out letters of administration with respect to the estate of the deceased and that this Tribunal may not have jurisdiction to hear and determine the issue as it is subject matter of the pending succession cause which the applicant intends to protest against so that he can protect his rights and interests in the suit property.
4. At a court mention on 12th March, 2024, this Tribunal ordered that the main reference be disposed of by way of written submissions and both parties complied. The tenant/applicant filed his submissions dated 18th April, 2024 and the landlords/respondents filed theirs dated 23rd April, 2024. We shall consider both submissions as we deal with the issues for determination.



B. Issues for determination

5. The following are the issues for determination; -
 - a. Whether there exists a Landlord/Tenant relationship between the parties herein.
 - b. Whether the complaint dated 29th March, 2023 is valid.
 - c. Who is liable to pay costs?

Issue (a) Whether there exists a Landlord/Tenant relationship between the parties herein.

6. The affidavits filed herein both confirm that the tenant/applicant entered into a tenancy agreement with one Timothy Lijodi Luvonga who is deceased. The lease agreement is dated 1st November, 2015 and is annexed to the landlord's/respondent's replying affidavit. The tenancy agreement was for a period of 1 year starting from 1st November, 2015 to 30th November, 2016.
7. The respondents in their replying affidavit dated 14th September, 2023 depose that since the year 2020, the tenant has not remitted any rent despite his utilization of the suit premises for his commercial gain. This implies that the tenancy continued after the expiry of the lease agreement.
8. 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.
9. 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:”
10. In view of the foregoing provision of the applicable law, it is clear that the tenancy herein is a controlled tenancy.
11. A cursory look at the documents filed in this matter, we find that there is no evidence to show that the respondents herein have been receiving any rent from the tenant/applicant after the demise of the original landlord one Timothy Lijodi Luvonga.
12. We agree with the tenant in his written submissions dated 18th April, 2024 that there is no evidence showing a tenancy agreement between the parties herein but an agreement for sale of land which is the subject matter of this case.
13. The respondents in their replying affidavit have admitted that from the period between 1st November, 2015 to 30th June, 2020, the rent for the suit premises was being paid to one Timothy Lijodi Luvonga before his demise. In addition, since 30th June, 2020 to date, the tenant has not remitted rent to the respondents despite his continued utilization of the suit premises.



14. There being no evidence of rent payment to the respondents, this Tribunal finds that there is no Landlord/tenant relationship between the parties in this matter and therefore this Tribunal lacks jurisdiction to hear and determine the matter.
15. The issue of ownership of the suit property is not within this Tribunal's jurisdiction and we therefore have no option but to strike out this matter for want of jurisdiction. Parties shall be at liberty to pursue the matter in the appropriate forum.

Issue (b) Whether the complaint dated 29th March, 2023 is valid

16. Having found that this Tribunal has no jurisdiction to hear and determine the instant dispute and the same is a candidate for striking out, the Complaint dated 29th March, 2023 is hereby struck out.
17. In regard to costs, the same are at this tribunal's discretion under Section 12(1)(k) of cap. 301, but always follow the event unless for good reasons otherwise ordered. We find that since the respondents did not raise the issue of jurisdiction which has occasioned the striking out of the Complaint and in any event, the dispute herein will be dealt with in another forum, we shall order each party to meet own costs of the suit.

Orders

18. In conclusion, the following final orders commend to us;
 - a. This matter is struck out for want of jurisdiction.
 - b. The tenant is at liberty to file the matter in the appropriate forum.
 - c. Each party shall bear their own costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7th JUNE 2024

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(MEMBER)

In the presence of:

Mrs Isokoni for Landlord

No appearance for Tenant

