



**Kombe v Yaa (Tribunal Case E015 of 2024) [2024] KEBPRT 443 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 443 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E015 OF 2024**  
**P KITUR, MEMBER**  
**APRIL 4, 2024**

**BETWEEN**

**ANDERSON KENGA KOMBE ..... TENANT**

**AND**

**SAMUEL MANGI YAA ..... LANDLORD**

**RULING**

**A. PARTIES AND REPRESENTATIVES**

1. The Applicant Anderson Kenga Kombe is the Tenant and has rented out the suit premises from the Landlord herein (hereinafter known as the Tenant)
2. The Firm of M/S Tonia Mwanja & Associates represents the Tenant in this matter.
3. The Respondent Samuel Mangi Yaa is the Landlord and the proprietor of the suit property located at Malindi Municipality.
4. The firm of M/S Simba & Simba Advocates represents the Landlord.

**B. THE DISPUTE BACKGROUND**

1. The Tenant Avers that she entered into a Lease Agreement with the Tenant for a period of 10 years starting 19<sup>th</sup> February 2019. That the Lease was for the Land and structure which he was paying rent at a monthly rate of Kshs 10,000/= for the land and Kshs. 14,000/= for the structure, totalling Kshs. 24,000/=.
2. That in the Course of the Tenancy, the Landlord began harassing him and went ahead to barricade the entrance of his premises rendering it difficult to do business.
3. The Tenant alleged that he carried out construction and renovations amounting to Kshs. 7,019,342/=



4. That before the costs of construction could be adjudged, the Landlord demanded for rent arrears amounting to Kshs. 922,000/= which figures were not substantiated.
5. Aggrieved, he filed a complaint together with an Application dated 11<sup>th</sup> January seeking for orders of injunction against the Landlord.
6. The Landlord filed a Replying Affidavit dated 29<sup>th</sup> January 2024 in which he alleged that the Tenant was in rent arrears and that he had instructed his lawyers to Demand for the payment form the Tenant.
7. The landlord alluded to a number of correspondences between his Advocates and Counsel for the Tenant which were aimed at settling the matter amicably. He made reference to several letters between the said Counsel which are on record.
8. The Landlord further denied having authorized the said constructions and if at all, whether the costs for them were to be borne by him.
9. In his submissions, the Landlord pointed out that this Honorable Tribunal lacks jurisdiction owing to the nature of the Agreement between the Parties, which issue we first have to consider before delving into the other issues raised.

### **LIST OF ISSUES FOR DETERMINATION**

Whether this Honorable tribunal has jurisdiction to entertain this matter.

### **D. ANALYSIS AND FINDINGS**

#### **Whether this Honorable Tribunal has jurisdiction?**

10. Before embarking on the gist of this matter, I would wish to satisfy that indeed this Honorable Tribunal has jurisdiction to hear and determine this matter.
11. I am guided by the decision in Petition no. 3 of 2016, Albert Chaurembo Mumba & 7 others and Maurice Munyao & 148 others where the Learned Judges in addressing the issue of jurisdiction stated as follows:

By jurisdiction, it is clearly meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which jurisdiction shall extend, or it may partake both these characteristics. If for example, the jurisdiction of an inferior court depends on the existence of a particular state of facts, the court must inquire into the existence of the facts in order to decide whether it has jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to a nullity. Jurisdiction, therefore, must be acquired before judgment is given.

12. The jurisdiction of this Honorable tribunal is stipulated under section 12 of the [Cap301](#) and specifically, it includes but not limited to; powers to determine whether or not a tenancy is a controlled Tenancy.
13. The [Act](#) Defines a Controlled tenancy, Under Section 2 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
14. I have considered that the Parties herein entered into a lease agreement dated 19<sup>th</sup> February 2019 for the lease of property situated within Malindi municipality and for the period of 10 years.
15. Upon further perusal of the Agreement, it is clear that there is no provision for termination of the agreement otherwise than for breach of covenant.
16. I have also considered that the parties did not object to the jurisdiction of this tribunal in their pleadings save for the Landlord's submissions. Be that as it may, I am guided by a passage in paragraph 68 of the ruling in Samuel Kamau Macharia case (supra): "[68] Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents . . . that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.
17. I have considered that the subject matter in this present case is one that is beyond the jurisdiction of this Tribunal and therefore any decision herein made shall not only be void but rather a nullity that will be incurable.
18. I will reproduce a passage in *Macfoy Vs United Africa Co. Ltd* (1961) 3 All E.R. 1169, Lord Denning delivering the opinion of the privy Council at page 1172(1) said;
- ‘If an Act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

## **C. ORDERS**

- a. The upshot is that the Tenant's Application and Complaint dated 11<sup>th</sup> January 2024 are hereby dismissed for want of jurisdiction.
- b. Costs are awarded to the Landlord assessed at Kshs. 24,000/=.

**HON P. KITUR**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**



Ruling dated, signed and delivered virtually by Hon P. Kitur this 4<sup>th</sup> April 2024 in the presence of Ms. Mwanja for the Tenant and Makworo for the Landlord.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

