



**Onditi v Ochola (Tribunal Case E030 of 2022)
[2023] KEBPRT 84 (KLR) (Civ) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 84 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E030 OF 2022
GAKUHI CHEGE, VICE CHAIR
FEBRUARY 21, 2023**

BETWEEN

RASTUS GUYA ONDITI APPLICANT

AND

WILSON O OCHOLA RESPONDENT

RULING

1. Before me is a preliminary objection dated 27th October 2022 in which the Respondent's advocate contend that the application dated 25th October 2022 and the main suit herein ought to be struck out with costs on the grounds that:-

 “(A) The tenant is no longer in possession of the suit premises having vacated from the same.

 (B) This court lacks the jurisdiction to punish for contempt.
2. According to the complaint dated 9th September 2022, the Respondent is accused of issuing a termination notice that is not in the prescribed form and of harassing the tenant without any justification.
3. On 15th September 2022, this Tribunal gave interim orders of injunction restraining the Respondent from subjecting the tenant to any annoyance or harassing him with the intention of inducing or compelling him to vacate from the suit premises or any part thereof or in any manner frustrating or terminating his tenancy pending hearing inter-partes on 28th September 2022.



4. Through a motion dated 25th October 2022, the tenant moved this Tribunal seeking that the landlord/ Respondent be cited for contempt of court for failure to comply with the orders of 15th September 2022.
5. It is upon service of the said application that the Respondent filed the aforesaid notice of preliminary objection which was directed to be disposed of by way of written submissions. The landlord complied through submissions dated 4th November 2022 but the tenant did not do so.
6. The landlord relies on the decisions in the cases of [*Owners of Motor Vessel Lilian Sv Caltex Oil \(Kenya\) Ltd* \[1989\] eKLR](#), [*Pritam v Ratilal* \[1972\] EA 560](#) and [*Republic v Chairman Business Premises Rent Tribunal ex-parte Premchand Shah* \[2012\] eKLR](#) to buttress the point on lack of jurisdiction.
7. I note that the tenant did not file any response to controvert the allegation that he was no longer in occupation of the suit premises and has not also demonstrated that this Tribunal has jurisdiction to punish for contempt of court.
8. Section 12(2) of [*Cap. 301*](#), Laws of Kenya is couched in the following terms:-

“(2) A Tribunal shall not have or exercise any jurisdiction in any criminal matter, or entertain any criminal proceedings for any offence whether under this Act or otherwise”.
9. Contempt of court proceedings are quasi -criminal in nature as one can be sent to prison in the event of being found liable for the offence. I hold the firm view that this Tribunal has no jurisdiction to punish for contempt of court in view of Section 5(1) of the [*Judicature Act*](#), Cap. 9, Laws of Kenya which is couched in the following terms:-

“(1) The High Court and the court of appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of justice in England and such power shall extend to upholding the authority and dignity of subordinate courts”.
10. In the case of [*Pritam v Ratilal & Another* \[1972\] EA 560](#), it was held that the absence of a Landlord and Tenant relationship ousts this Tribunal’s jurisdiction at page 3/5 as follows:-

“Therefore, the existence of the relationship of landlord and tenant is a prerequisite 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 applicability of the Act is a 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”.
11. In absence of any evidence that the tenant is still in occupation of the suit premises, I find and hold that the issue remains uncontroverted and there is no basis of a continuation of the instant proceedings.
12. In the premises, the Respondent’s preliminary objection has merit and is hereby upheld with the result that the tenant’s complaint and all the proceedings herein are struck out with costs to the Respondents. It is so ordered.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 21ST DAY OF FEBRUARY 2023.



HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling read in absence of both parties.

