



**Ibrahim & another v Karigi (Tribunal Case E710 of 2023)
[2023] KEBPRT 1132 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1132 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E710 OF 2023
M MAKORI, MEMBER
NOVEMBER 29, 2023**

BETWEEN

IDRIS IBRAHIM 1ST APPLICANT

HALIMA IBRAHIM 2ND APPLICANT

AND

MARGARET KARIGI RESPONDENT

RULING

1. The present claim was filed vide an application dated 20th July 2023 supported by the supporting affidavit of Idris Ibrahim and which application was opposed vide a Replying Affidavit dated deposed to by Margaret Karigi.
2. The Tenant sought for among other orders that the Landlord/Respondent an injunction do issue against the landlady from harassing and/or evicting them from the parcel of Land at Tuff form area, Sabaki estate, Mlolongo town, Athi River within Machakos county on which property the tenants claim to be undertaking business relating to sale of refreshments and a pool table.
3. The Respondent on her replying affidavit deposed that the application is an attempt by the tenants to land grab her property as there is no landlady-tenancy relationship.
4. From the totality of the pleadings filed by parties and submissions made, several issues pose themselves for determination:
 - a) Whether there is a Landlord/Tenant relationship in existence between the parties herein.
 - b) Whether the Tenant is entitled to the orders sought in the application dated 20th July 2023.
 - (c) Who is liable to pay costs of the suits?



Whether there is a Landlord/Tenant relationship in existence between the parties herein

5. Under section 2(i) of Cap 301, a 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 date thereof OR
 - iii. Relates to premises of class specified under subsection (2) of this section.
5. From the above statement it is clearly established that indeed a Landlord-Tenant relationship can be established in various forms including an 'unwritten' agreement.
6. It is in dispute in this case whether the parties herein were in a Tenant and Landlord.
7. To support their claim, the tenants have made claim that there have in several occasions made payments to the landlord and produced an Mpesa statement as prove of fact however we note that the statement is illegible and unmarked and as such it is hard to establish the number of transactions made based on the said statement.
8. The tenants have proceeded to make a claim that the Landlady herein has been receiving rent from the Tenant however the landlady avers that the money was deposited to his Mpesa number without her consent and the same was reversed to the tenant.
9. In perusal of the documents in their entirety it can be established that only one payment is being claimed and disputed. The said transaction was made on the on the 3rd of June 2023 and the same is acknowledged by both parties in their letters from their advocates and the averments on their affidavits
10. Further the tenant confirms that indeed the reversal was made and where they instructed the advocate to write to the landlady on the claimed irregular reversal.
11. There is no additional evidence to what has been stated of any other payments to bound the tenancy relationship.
12. I have carefully analyzed the parties' submissions and all documents filed in this Tribunal. It is apparent that there is no evidence showing a tenancy agreement as established above.
13. I find that a single transaction that has been reversed and disputed by the landlady cannot by itself be deemed to establish a landlady-tenancy relationship.
14. In support of the above claim reliance is sought in the case of in Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of *Pritam vs. Ratilal and Another* Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such 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 a 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.”

15. In this case having established that there is tenant-landlady relationship it would be important to note that the tribunal has no jurisdiction.
16. The jurisdiction of Business Premises Rent Tribunal was aptly discussed in the case of [*Republic vs Business Premises Rent Tribunal & Another Ex- Parte Albert Kigera Karume*](#) [2015] eKLR which cited with approval the case of [*Re Hebtulla Properties Ltd.*](#) [1979] KLR 96; [1976-80] 1 KLR 1195 where the Court dealt with the provisions of section 12 of [*Cap 301*](#) and stated as follows:

“The Tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied... The powers of the Tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the Tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under section 12(1)(a) to (n). The Act was passed so as to protect tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the Tribunal is to hear and determine references made to it under section 6 of the Act. Section 9 of the Act does not give any powers to the Tribunal, but merely states what the Tribunal may do within its area of jurisdiction..... It would be erroneous to think that section 12(4) confers on the Tribunal any extra jurisdiction to that given by and under the Act elsewhere...Section 12(4) of the Act must be read together with the rest of the Act and, when this is done it becomes apparent that the complaint must be about a matter the Tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy.... The Act uses the words “any complaint” and the only qualification is that it must be “relating to a controlled tenancy”.

17. This Tribunal derives its jurisdiction from the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#), with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.
18. Noting that parties have not adduced evidence to show the existence of a tenancy agreement which is a contested issue, I have no option but to down my tools as it was stated in the case of *Owners of the Motor Vessel ‘Lillian’ (s) versus Caltex Oil (Kenya) Ltd* [1989] KLR1, as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

19. Based on the foregoing, it is established that the Tenants are not entitled to the prayers requested and as such the tribunal makes the following orders
 - a. The Applicant’s reference and notice of motion Application dated 20th July 2023 are hereby dismissed.
 - b. I exercise my discretion to grant the applicant 45 days from today within which to vacate the premises failure to which the Respondent will be at liberty to evict them with the assistance of the OCS Mlolongo Police.
 - c. 60 days stay thereafter eviction orders to issue.



d. Each party shall bear its costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF NOVEMBER 2023.

HON. MIKE MAKORI - MEMBER

29.11.2023

