



**Mwai v Njoroge (Tribunal Case E106 of 2022)
[2023] KEBPRT 1302 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1302 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E106 OF 2022
CN MUGAMBI, CHAIR
MAY 5, 2023**

BETWEEN

JOSEPH MWAI APPLICANT

AND

RACHEL WANGUI NJOROGE RESPONDENT

RULING

Introduction

1. The landlord's application dated 30.5.2022 seeks an order of eviction against the tenant/Respondent, an order restraining the tenant from interfering with the landlord's quiet and peaceful enjoyment of the suit property, a declaration that the notice dated December 6, 2022 is regular and valid against the tenant and the tenant be ordered to pay the landlord rent due in the sum of Kshs. 610,000/=.

The landlord's deposition

2. The landlord has deposed in his affidavit that the tenant has accumulated rent arrears amounting to Kshs. 610,000/=.
3. The landlord has further deposed that he has served the tenant with a termination notice dated December 6, 2021 and that it is in the interests of justice that the tenant be restrained by way of a temporary injunction from interfering with the suit premises and the landlord's enjoyment thereof.

The Tenant's deposition

4. The tenant has deposed in her replying affidavit that she had been the Respondent's tenant in the suit premises since 2019.



5. The tenant further depones that she renovated the premises with the consent of the Respondent and incurred costs amounting to Kshs. 102,000/= which sum was to be refunded to the tenant by the landlord.
6. The tenant has deponed that she vacated the suit premises in May 2021 and while she was leaving, she agreed with the landlord that she had outstanding rent arrears of Kshs. 195,000/= which the landlord was to recover by selling the tenant's business goods/materials which included seats, dryers, shampoos, mirrors amongst other goods.
7. That the tenant in the affidavit has denied owing the landlord Kshs. 610,000/= in rent due and payable.

Analysis and determination

8. I have read the affidavits of the parties and their respective submissions. It is important, in view of the tenant's replying affidavit, to determine first and foremost whether there exists a landlord/tenant relationship between the parties herein and whether therefore the tribunal has jurisdiction to hear and determine this matter.
9. The tenant's affidavit at paragraph 9 to 13, is in the following terms:-
 - 9: that I was a tenant of the said premises until May 2021 when I decided to leave the said premises as business was not so good then.
 - 10: that when I left the premises, the landlord and I sat down and made an agreement that I had rent arrears of Kshs. 195,000/=.
 - 11: That on leaving the premises, I left all my inventory and business materials within the said premises where the landlord agreed that he would sell the said goods to recover his rent
 - 12: That the goods left at the said premises which include seats, dryers, shampoo, mirrors and many other things.
 - 13: That after I left, the landlord gave up part of the said business premises to one Jackson Kibet to run the said Kinyozi and salon.
10. The above depositions by the tenant are clear that the tenant has since vacated the suit premises. The landlord has not challenged the said deposition in any way and I am convinced on a balance of probabilities that indeed the tenant has vacated the suit premises. There does not therefore exist the relationship of a landlord and tenant between the parties herein and the application of Cap 301 and the jurisdiction of this Tribunal has therefore been ousted.
11. In the case of; *Republic v Chairperson Business Premises Rent Tribunal at Nairobi & another exparte Suraj Housing and Properties Limited & 2 Others* [2016] eKLR, the court cited with approval the decision in *Pritam v Ratilal & Another* [1972] EA 560 as follows:-

“As stated in the *landlord and tenant (shops, Hotels and catering establishments) Act* itself, it is an act of Parliament to make provision with respect to premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this special legislation is to provide extra and special protection for tenants. A special class of tenants is created.

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 exercises 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.”

12. In the absence of jurisdiction, the tribunal cannot take any extra step in the adjudication of this dispute; it would be acting in vain as any determination arising therefrom would be a nullity.
13. Consequently, the landlord’s reference and application are hereby dismissed for want of jurisdiction. The landlord shall bear the tenant’s costs assessed at Kshs. 25,000/= as I note that the suit herein was filed after the tenant had already vacated the premises.

RULING SIGNED, DATED AND DELIVERED THIS 5TH DAY OF MAY 2023

HON. CYPRIAN MUGAMBI - CHAIRPERSON

5. 5.2023

In the absence of the parties

