



**Khan t/a Wentworth Health & Fitness Center v Gilt-Edge Development Limited & another
(Tribunal Case E902 of 2023) [2024] KEBPRT 381 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 381 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E902 OF 2023
N WAHOME, MEMBER
MARCH 15, 2024**

BETWEEN

**MANOWAR KHAN T/A WENTWORTH HEALTH & FITNESS
CENTER TENANT**

AND

GILT-EDGE DEVELOPMENT LIMITED LANDLADY

AND

ALBANUS MULEI RESPONDENT

RULING

1. The suit herein was initiated by the Reference dated 15/9/2023 and was grounded under Section 12(4) of the *landlord and Tenant (Shops, Hotels and Catering establishment) Act*, Cap. 301 hereinafter the Act” The grievances by the Tenant/Applicant were that
 - i. It had been the 1st Respondent’s Tenant for over 20 years, faithfully paying rent and meeting other obligations,
 - ii. The Respondents and in particular the 2nd Respondent was harassing it with a view to evict it from the demised premises known as L.R No. 209/15,286 Kileleshwa on Githunguri road.
 - iii. This harassment started on the sad demise of the 1st Respondent’s director one S.S. JOWHAL,
 - iv. The Respondents intended to effect levy of distress when there was no rent in arrears and had declined to accept rent.
2. The applicant therefore sought for the following reliefs in the reference:-
 - a. That this Tribunal declares him a protected Tenant,



- b. That the Landlord and/or his agents be stopped from evicting and or in any manner whatsoever from interfering with the Tenant's occupation of the rental premises without reference to this Tribunal.
 - c. Costs of this reference.
 - d. Any other relief that this Honourable Tribunal shall deem just and expedient.
3. The reference was accompanied by a notice of motion of the same date which in principal sought for the following reliefs:-
- i. The Respondent be restrained from levying distress on the Applicant or in any other way interfering with its quiet enjoyment of the demised premises pending the hearing of the application and eventually the reference.
 - ii. That the OCS Kileleshwa Police Station to ensure compliance.
4. On their part, the Respondents filed the Replying Affidavit sworn by the 2nd Respondent one Mr. Albanus Mulei on the 24/11/2024 and rebutted all the assertions by the Applicant including the purported payment of rent. The respondent however admitted at one point locking up the demised premises and even disconnecting power supply to the demised premises.
5. The Respondents further presented that they had since allowed the Applicant access to the demised premises and that they had also reconnected power supply to the Applicants premises.
6. The Tenant in response to the Replying Affidavit filed a further Affidavit sworn by Manowar Khan on 20/1/2024. It made a heavy attempt to demonstrate payment of rents and utility bills but obviously left a lot to be desired. I however do not wish to venture into that province at this time.
7. By consent of the parties, the application dated 15/9/2023 was agreed to be canvassed by way of written submissions. The applicants submissions are dated 29/1/2024 and those for the Landlord are dated 21/2/2024. The same were supported by elaborate case law and I have perused and appreciated the same.
8. I note that neither of the parties have raised the question of whether this Tribunal has the requisite jurisdiction to canvass over the matters in issue. The jurisdiction of this court is donated by Section 2(1) of the Act which provides that:-
2. (1)- "controlled tenancy means a Tenancy of shop, hotel or catering establishments-
 - (a) Which has not been reduced into writing or
 - (b) which has been reduced into writing and which,
 - (1) is for a period not exceeding five years or
 - (ii) contains provision for the termination, otherwise than for breach of covenant, within five (5) years from the commencement thereof".
9. The lease agreements annexed to the Affidavit of Albanus Mulei and marked "AM-4 and "AM-5" have not been disputed by the Applicant. Plainly, the same as written, are for a period exceeding five (5) years and there is no provision for termination of the same for whatever reason.
10. The question of jurisdiction is so cardinal, central and fundamental in any proceedings that same can be raised at any stage of any proceedings, by any party in the proceeding and even by the court suo motto. When raised, the court must stop and give priority to the determination of the same.



11. In the case of Owners of Motor Vessel "Lillian S" – vs- Caltex Oil (Kenya) Ltd (1989) the court of Appeal held that:-

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amount to nothing. Jurisdiction must be acquired before judgement is given”.

12. The court went further to emphasize on the importance of jurisdiction by holding that:-

“It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited”.

13. In the case of Phoenix of E.A Assurance Ltd – vs- S.M. Thiga T/A Newspaper service Civil Appeal No. 244 of 2010 the court of Appeal held that:-

“In common English Parlence, Jurisdiction denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, the result will be a nullity ab initio and any determination made by such court will be available to being set aside *ex debito justitiae*”.

14. The upshot of all these is that the matter before me in view of the dispositions herein before belong to another jurisdiction and not this tribunal. I will therefore decline the invitation to preside over the same and this Tribunal will down its tools and not make any further step in these proceedings.

15. In the final analysis, the orders that commend themselves to me are the following:-

- i. That the reference and Notice of Motion application both dated 15/9/2023 are struck out.
- ii. That the Applicant shall pay costs to the Respondent assessed at Kshs.20,000/-.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF MARCH, 2024.

HON. NGEWA WAHOME MBS - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of Mr. Ogutu holding brief for Mr. Wairitu for the 1st and 2nd Respondents.

Mr. Musyoki for the Tenant/Applicant absent.

HON. NGEWA WAHOME MBS - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

