



**Abdule & another v Kakai & another (Tribunal Case E097 of 2023)
[2023] KEBPRT 1161 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1161 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E097 OF 2023
M MAKORI, MEMBER
DECEMBER 7, 2023**

BETWEEN

AHMEDKHEYR NOOR ABDULE 1ST TENANT

KEIRTO MOHAMMED ADAN 2ND TENANT

AND

JOSEPH KAKAI 1ST LANDLORD

ELIZABETH KAKAI 2ND LANDLORD

RULING

1. The Applicants are Tenants of premises situated at Land Reference No. 209/2083 Nairobi while the Respondents are the Landlords of the suit property.
2. The relationship between the parties was cemented through execution of a Lease Agreement dated 23/11/2019. Vide an application dated 14/9/2023 the Applicants sought to Restrain the Respondents interfering with their occupation of the suit property.
3. At the on-set the court is lost as to which provision of law that the Notice of Motion dated 14/9/2023 stands on as none has been provided as a standard reference for this court to consider.
4. This court further notes, besides the authority dated 14/9/2023 and lease agreement dated 23/11/2019 there is no other document annexed and/or alluded to by the Applicants as a guide to this Honourable Court.
5. On the other hand, the Respondents filed a Relying Affidavit dated 28/9/2023 and a Notice of Preliminary Objection dated 28/9/2023 after which the Applicants filed a supplementary Affidavit dated 3/10/2023.



6. I have carefully considered submissions by both parties and proceedings in this matter and identified the following issues for determination; -
 - i. Whether this Tribunal has Jurisdiction to hear and determine on the matter; and
 - ii. Whether the Applicant has satisfied the conditions for warrant grant of an injunction.
7. The first issue this court will determine is whether this Tribunal has Jurisdiction to hear and determine on the matter. The jurisdiction of BPRT Tribunal was aptly discussed in the case of *Republic v 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”.
8. 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.
9. From the reading of section 4 of the *Rent Restriction Act* it is easy to decipher that the tribunals deal with tenancy disputes only when there are subsisting tenancy relationships. Where there is no subsisting tenancy relationship between the parties to the dispute, the tribunal has no jurisdiction.
10. In the present case, a tenancy agreement was entered into by parties on or about the 23/11/2019 *prima facie* this establishes the Landlord-Tenancy Relationship and which is a pre-requisite before this Tribunal can move a step further.
11. The Second issues for determination is whether the Applicant has satisfied the conditions for warrant grant of an injunction. Before delving into the issue I wish to note that section 4(1) of *Cap 301* provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
12. The *Act* further provides for the grounds on which the Landlord may seek to terminate the tenancy in section 7. The grounds stated under this provision and which are applicable herein include; -



- i. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
 - ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy; and
 - iii. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises.
13. That upon nonpayment of Rent arrears by the Applicants/Tenants, the Respondent decided to levy distress over the suit property. The right to levy distress is reserved under section 3 of the [Distress for Rent Act](#), Cap 293 of the Laws of Kenya, which provides; -
- “subject to the provisions of this Act and having any rent or rent service in arrears and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the Common Law of England in a similar case.”
14. The Tenancy Agreement at Clause G provided for Re-Entry into the suit property in the event the Tenant would offend the terms of the lease agreement entered into by the parties.
15. The intention to evict the Applicant and re-enter the premises was actuated on 12/9/2023 vide dated the same day, detailing the amounts in which the Applicants were in arrears and requiring them to make good the arrears.
16. The Applicants makes no reference to the letter dated 12/9/2023 and as thus the averments in the said letter are not controverted. That being said, I have nothing at my disposal to suggest otherwise other than to pursued me that the Applicants are in arrears and only came to this court when they were asked to pay the debt owed to the Respondents.
17. To make the appropriate orders I am guided by section 12(1)(e) of [Cap 301](#) which grants the Tribunal power; -
- “To make orders upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits which orders may be applicable to any person whether or not he is a Tenant, being at any material time in occupation of the premises comprised in a controlled tenancy.”
18. I wish to adopt what the superior court stated in the case of [Samuel Kipkori Ngeno & Another v Local Authorities Pension Trust \(Registered Trustees\) & Another](#) (2013) eKLR at paragraphs 9 and 12 as follows: -
- “9. A tenant's first and main obligation is to pay rent as and when it becomes due, for the Landlord has the right to an income from his investment....”
 - “12 The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving the court's



discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due”.

19. In the circumstances of this case and with reference to the Notice of Preliminary Objection dated 28/9/2023, Grounds of Opposition dated 28/8/2023 and Application dated 14/9/2023 I order as follows; -

- i. The Applicant’s Notice of Motion Application dated 14th September, 2023 is hereby dismissed.
- ii. In exercise my discretion I grant the applicants 60 days from today within which to pay any outstanding arrears and/or vacate the premises failure to which the Respondents shall be at liberty to Levy for Distress for the outstanding arrears.
- iii. Each party shall bear its costs.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 7TH DAY OF DECEMBER, 2023

HON. MIKE MAKORI (MR.)

MEMBER

07.12.2023

Delivered in the presence of Mr. Mwenda for Kamau Kuria for the 1st and 2nd Respondents

No appearance for the Applicant

