



**Kobia t/a Meims Medical Centre Limited v Mwaura (Tribunal Case  
E929 of 2024) [2024] KEBPRT 1639 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1639 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E929 OF 2024  
A MUMA, MEMBER  
NOVEMBER 13, 2024**

**BETWEEN**

**JOSEPHINE KOBIA T/A MEIMS MEDICAL CENTRE LIMITED ..... TENANT**

**AND**

**FRANCIS WAINAINA MWAURA ..... LANDLORD**

**RULING**

**A. Parties And Their Representatives**

1. Josphat Kobia t/a Meims Medical Centre Limited (the “Tenant”) is a business premises located on Kamae Bypass along Ruaka-Ruiru Bypass (the “suit premises”).
2. The Firm of T.M. Nyaga & Co. Advocates represents the Tenant in this matter
3. Francis Wainaina Mwaura (the “Landlord”) is the registered owner of all that suit premises.
4. The Firm of CK Chege and Company Advocates represent the Landlord in this matter.

**B. Background Of The Dispute**

5. Through a Reference and an Application dated 26<sup>th</sup> August, 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders that inter-alia: the Landlord be restrained from interfering and/or evicting the Tenant from the suit premises and the OCS Kahawa West Police Station to ensure compliance with the orders.
6. Upon perusal of the Tenant’s Application and Reference, the Honourable Tribunal, on 27<sup>th</sup> August, 2024, ordered the Landlord be restrained from interfering with the Tenant’s occupation of the suit premises and the OCS Kahawa West Police Station to assist in enforcing and ensure compliance with orders.



7. In response to the Tenant's Applications, the Landlord filed a Notice of Preliminary Objection and Supporting Affidavit both dated 13<sup>th</sup> September, 2024. Additionally, the Respondent filed a Replying Affidavit dated 19<sup>th</sup> September, 2024.
8. The Honourable Tribunal, on 25<sup>th</sup> September, 2024, directed each party to file Supporting Affidavit and Submissions within 7 days respectively. The Tenant, in response, filed a Ground of Opposition and Supplementary Affidavit both dated 30<sup>th</sup> September, 2024.
9. Similarly, the Tenant filed its Submissions dated 1<sup>st</sup> October, 2024. In response, the Landlord filed its Further Affidavit dated 14<sup>th</sup> October, 2024 and Submissions dated 15<sup>th</sup> October, 2024.
10. It is therefore the Landlord's Notice of Preliminary Objection dated 13<sup>th</sup> September, 2024 that is the subject of this Ruling.

### **C. Landlord's Case**

11. The Landlord avers that the Tenant vacated the premises on 1<sup>st</sup> June, 2024 and subsequently handed over the keys of the suit premises. Additionally, the Tenant collected all its belongings and left the suit premises vacant.
12. The Landlord further avers that a new Tenant has taken possession of the suit premises and has been in occupation since 1<sup>st</sup> August, 2024. As such, the Landlord avers that this Tribunal lacks jurisdiction to hear the Tenant's Application as there exists not Tenancy relationship between the parties herein.

### **D. Tenant's Case**

13. The Tenant affirms that he has never vacated the suit premises. Additionally, the Tenant avers that the Landlord's agent issued him with an oral vacation notice.

### **E. Jurisdiction**

14. The Jurisdiction of this Honourable Court has been contested by the Landlord vide a Notice of Preliminary Objection dated 13<sup>th</sup> September, 2024.
15. It is the Landlord's contention that currently there exists no tenancy relationship between the parties herein as the Tenant has since vacated the premises.

### **F. Issues For Determination**

16. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the sole issue for determination is: Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.



## **G. Analysis And Findings**

### **i. Whether this Honourable Tribunal has jurisdiction to hear and determine the subject of the suit.**

17. This Honourable Tribunal has the duty to interrogate the question of jurisdiction and satisfy itself before making any further step in line with the celebrated case of Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited [1989] eKLR where the Court of Appeal held as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it...”

18. In the matter herein, it is the Landlord's contention that the consequence of the Tenant vacating the premises was that it extinguished the tenancy relationship between the parties herein and subsequently, the jurisdiction of this Honourable Tribunal as provided under Section 2 of Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya. Additionally, the Landlord contends that the Notice of Preliminary Objection is founded on a question of jurisdiction as set out by the Court in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors (1969) EA 696, where the court stated that:

“Consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings...Examples are an objection to the jurisdiction of the Court, or a plea of limitation...”

19. In the present, it is interesting to note that the Tenant has admitted that a new tenant is in occupation of the suit premises who is currently paying Kshs. 150,000.00. Additionally, the Landlord adduced a rent statement for the Tenant which payments ceased in May, 2024. In response the Tenant contests that he has not vacated the suit premises. However, the Tenant has not adduced any evidence in support of the same.
20. In light of the above, it is evident that there existed no tenancy relationship between the Tenant and the Landlord herein at the time of the Reference. As such, this Honourable Tribunal does not have the jurisdiction to hear and determine the present Application and Reference. Therefore, it must down its tools as was observed by the Court of Appeal in Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited (Supra) where it 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

## **H. Orders**

21. In the upshot and having established that this Honourable Tribunal has no jurisdiction to hear and determine the present Application and Reference, the following orders shall abide;
- The Tenant's Reference and Application dated 26<sup>th</sup> August, 2024 is hereby dismissed for lack of jurisdiction;
  - The Landlord shall have the costs assessed at Kshs. 10,000.00;
  - Interim Orders issued on 27<sup>th</sup> August, 2024 are hereby vacated.



**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, delivered and signed at Nairobi on this 13<sup>th</sup> day of November 2024 in the presence of Ongeru holding brief for Nyaga for the Tenant and Chege for Landlord.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

