



**Restitution Chambers Kenya Limited v Akiba Properties Kenya Ltd (Tribunal
Case 90 of 2021) [2023] KEBPRT 1284 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1284 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 90 OF 2021
CN MUGAMBI, CHAIR
AUGUST 1, 2023**

BETWEEN
RESTITUTION CHAMBERS KENYA LIMITED TENANT
AND
AKIBA PROPERTIES KENYA LTD LANDLORD

RULING

Introduction

1. The tenant's application dated 11.11.2022 seeks orders to the effect that the jurisdiction of the Tribunal has been voided by the landlord's unlawful actions in contempt of the court's order and consequently the Applicant is at liberty to seek compensation and other reliefs in the court with the necessary jurisdiction.
2. The Applicant has also prayed for an order that the Respondent is liable for all financial and other consequences of its blatant and contemptuous disregard of three court orders and the unlawful termination of the tenancy, the distribution of the Applicant's business premises, loss of developments, goodwill and improvements above and below ground, on the subject/suit premises L.R. No. 4148/94/ original No. 4148/11/76.
3. The Applicant has also sought the costs of the application.

Parties Pleadings

4. Both parties have filed affidavits in support of and in opposition to the application and also filed their written submissions. I have read the same and will consider them in this ruling.

Issues for determination

5. The issues that arise for determination are in my view the following:-



- a. Whether the jurisdiction of the court has been voided.
- b. Whether, if the jurisdiction of the Tribunal has been voided, the Tribunal has any residual power to make any further determinations in this matter.
- c. What orders ought to be made in the circumstances.

Issue A

6. The Applicant has conceded that the jurisdiction of the Tribunal has been ousted by the conduct of the Respondent. At ground 5 of the application the Applicant states;

“SUBPARA 5-

That despite the preservation of the tenancy herein by the BPRT through not less than three (3) orders, the landlord/Respondent has itself or through its agents, servants, employees or anyone coming under or through them forcefully evicted the tenant, destroyed the business premises and converted the tenant/Applicant's property.”

At ground No. 6, the Applicant states:-

“SUBPARA 6-

That by dint of the unlawful and forceful eviction, the tenant seeks the direction of this Honourable Tribunal regarding its jurisdiction following the forceful and unlawful termination of tenancy in contempt of the BPRT and three of its orders.”

7. These grounds are replicated as depositions at paragraph 6 and 7 of the Applicants affidavit sworn 11.11.2022.
8. On the part of the Respondents, it has been deponed in the replying affidavit that all along, the Tribunal never had jurisdiction to determine this matter. The Respondent has further disposed that the tenants have vacated the suit premises in the insistence of a third party who purchased the suit premises.
9. In think it is now common ground as between the parties that the substratum of the suit has disappeared. The tenant admits that it was forced out of the premises while the Respondent while stating that it sold the suit property to a third party, also admits that the tenants who were in the premises have since vacated and the third party has taken possession and fenced the land/suit property.
10. The only issue the parties are unable to agree on is who is responsible for the eviction of the tenants and whether it was lawful or not. The Applicant seeks to invite the tribunal to make orders to the effect that the Respondent is in contempt of the court orders issued by the Tribunal on three occasions. Whereas, I agree with the common position taken by the parties that the tenant is no longer in the suit premises and that ownership thereof has changed, I am not able to make any finding on whether the actions of the Respondents, if any, are in violation of court orders or not as the present application is not one STRICTLY on that issue. I am also made to understand from the affidavit of the Respondent that the issue of the contempt of the Tribunal orders had earlier been taken up in the High court against the Respondent herein and a third party.
11. The relationship of landlord and tenant, between the Applicant and the Respondent has been brought to an end or has come to an end. The jurisdiction of the Tribunal is founded on the existence of the said relationship and where none exists, the provisions of Cap 301 cannot apply and consequently, the Tribunal has no jurisdiction.



In the case of; Pritam vs Ratilal & Another [1972] EA, the court held 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.”

12. I therefore do agree with the parties that the Tribunal has no jurisdiction but only for the reason that there no longer exists the relationship of landlord and tenant as between the parties and that further the tenants have already vacated the suit premises whose possession and control have been taken over by a third party.
13. I further agree with the Applicant that it should take up the matter with courts/fora with the appropriate jurisdiction.
14. From a perusal of the pleadings, it would appear this matter transcends the limits of the Business Premises Rent Tribunal and it is only proper that parties go before a forum where their grievances can be ventilated.

Issue B

15. Having found that the Business Premises Rent Tribunal has no jurisdiction to hear and determine this matter, does the court have any residual jurisdiction to make any further orders?
16. The Applicant's prayer No. 2 invites the court to make a finding that the Respondent is liable for all financial and other consequences of its blatant and contemptuous disregards of court orders, unlawful termination of the tenancy and loss of its developments, goodwill and improvements. Even barring the procedural and technical challenges that this prayer faces, would the Tribunal grant the same? I do not think so.

The kind of a finding sought above can only be reached after an investigation into the nature of the transgressions complained of. As it stands, the prayer presumes that the Tribunal has investigated and found out that the Respondent is guilty of all the actions complained of, this is obviously not the case as this matter never proceeded for hearing and the Respondent has never in its pleadings admitted to any of the acts complained of. It would be prejudicial and premature to make any such conclusive findings on an application such as the present one. But even then, the above considerations would only suffice if the Tribunal had jurisdiction to determine this issue.

17. In further determining this issue, I am of the view that once the Tribunal has decided that it has no jurisdiction in this matter, any further determinations by the Tribunal in the matter would be without jurisdiction and therefore null and void. The moment the Tribunal decides or arrives at the conclusion that it has no jurisdiction, it has to down its tools and GO NO FURTHER.

In the case of; Owners of the Motor Vessel Lillian SS vs Caltex Oil (K) Ltd [1989] KRL 1, the court stated as follows:-

“I think 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.



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 continuation of proceedings pending other evidence. A court of law down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

18. Consequently, it is my view and I so find that the Tribunal having already found that it has no jurisdiction in this matter, it has no jurisdiction to issue the orders sought by the Applicant in its second prayer in the application.

Issue C

19. In the circumstances, I make the following orders:-
- a. That this Tribunal has no jurisdiction to hear and determine this matter and the tenant/Applicant is at liberty to seek relief in other judicial for a with the necessary jurisdiction.
 - b. Prayer 2 of the application is declined.
 - c. Each party will bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF AUGUST 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

1.8.2023

In the presence of; Mr. Ngeru for the landlord

In the absence of the tenant/Applicant and Counsel

