



**Barrack v Mango (Tribunal Case E005 of 2024)
[2024] KEBPRT 450 (KLR) (28 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 450 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E005 OF 2024
A MUMA, AG. CHAIR & J ROP, MEMBER
MARCH 28, 2024**

BETWEEN

EUNICE AWUOR BARRACK TENANT

AND

JUDITH MANGO LANDLORD

RULING

A. Parties And Representatives

1. The Applicant, Eunice Awuor Barrack is the occupant of the Respondent's Property situated in Kisii Town (hence the "Tenant").
2. The Applicant is acting in person in this matter.
3. The Respondent, Judith Mango, is the occupant of the suit property and (hence the landlord).
4. The firm of O.H Bunde & Co.Advocates represents the Respondent in the matter.

B. Background Of The Dispute

5. The tenant moved this tribunal vide a reference and application dated 30th January 2024 seeking orders that the application be certified as urgent, release of confiscated goods by the landlord or in the alternative permission to break up the padlocks and gain entry of the premises pending hearing and determination of the suit, the Officer Commanding Station Ringa Police station to enforce security during the exercise.
6. The Tribunal issued orders dated 2nd February 2024 certifying the application as urgent and ordered the tenant to serve for interpartes hearing on 8th February 2024 and file an affidavit of service.



7. In response, the Landlord filed a Replying Affidavit dated 6th February 2024 stating that the Tenant has outstanding rent arrears for the months of May and June 2023 totaling to Kshs.24,000.00 and an unsettled electricity bill totaling KShs.32,320.00.

C. The Tenant's Claim

8. The tenant claims that the landlord closed her business on 14th June 2023 which is located in the landlord's property on the grounds of default in payment for one month.
9. The tenant also claims that as a result of the closure, she had lost her only source of income and sought that the tribunal issue an order for release of her items at their normal condition or in the alternative payment of their equivalent value in the sum of KShs.550,000.00 only together with loss of daily income of Kshs.10,000.00 from the date thereof till determination of the matter.

D. The Landlord's Claim

10. It is the Landlord's case that the Tenant has outstanding rent arrears for the months of May and June 2023 totaling to Kshs.24,000.00 and an unsettled electricity bill totaling KShs.32,320.00.

E. List Of Issues For Determination

11. I have carefully perused the material placed before this tribunal by the parties and it is my considered opinion that the following issues fall for determination:
- a. Whether the Tribunal has jurisdiction to hear and determine the reference and application by the Tenant
 - b. Whether the tribunal should grant the orders sought

H. Analysis & Determination

a. Whether the tribunal has jurisdiction

12. This Honorable Tribunal notes that the jurisdiction to hear and determine this matter has not been contested by either party. However, this Tribunal has a duty to interrogate the issue of jurisdiction suo moto and satisfy itself on the same 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. 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 must down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction"

13. As was stated by the Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR:

"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written



law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...”

14. The jurisdiction of the Business Premises Rent Tribunal is governed by the Landlord and Tenant Shops Hotels and Catering Establishments Act Cap 301 Laws of Kenya (hereinafter the Act). The preamble to the Act states that:

“It is an Act of Parliament to make provisions 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.”

15. The jurisdiction of this Honorable Tribunal is derived from existence of a landlord and tenant relationship. The Tenant had already moved out of the premises before approaching this Honorable Tribunal as evidenced by the photo showing the empty premises presented by the Landlord marked JM-4. No evidence in the contrary has been produced to show the premises was locked by the Landlord and goods held inside.
16. In that regard, I rely on the decision in Republic – vs- Chairperson, Business Premises Rent Tribunal at Nairobi ex-parte Suraj Housing & Properties Limited & 2 Others (2016) eKLR at page 7/11 where the court cited with approval the decision in Pritam – vs- 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 certain 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 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”. (Emphasis added).

c. Whether the Court should grant the orders sought.

17. The Tenant moved the tribunal on 30th January 2024 for an order against the landlord to release her items allegedly taken in June 2023 at their normal condition or in the alternative payment of their equivalent value in the sum of KShs.550,000.00 only together with loss of daily income of Kshs.10,000.00 from the date thereof till determination of the matter.
18. However the Tenant has waited over six months to move this tribunal equity never aids the indolent. The Ground had shifted and by the time she moved this Tribunal she was long out of the premises. The orders can therefore not issue.
19. This Tribunal lacks the requisite jurisdiction to hear and determine the Tenant’s Application and Reference herein, the Tribunal must then down its tools and cannot therefore make any orders sought in the said Application and Reference.



I. Orders

20. The upshot is that this Honorable Tribunal lacks jurisdiction to hear and determine this matter. In the circumstances, the following orders shall abide:

- a. Tenant's Application dated 30th January 2024 is hereby dismissed; and
- b. Each party shall bear their own costs.

HON. A MUMA.....ACTING CHAIR/ MEMBER

HON JACKSON ROP.....MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 28th day of March 2024 in the presence of the Tenant in person and in the absence of the Landlord.

HON. A MUMA.....ACTING CHAIR/ MEMBER

HON JACKSON ROP.....MEMBER

BUSINESS PREMISES RENT TRIBUNAL

