



**Zokomo Foods Limited v Kinuthia (Tribunal Case E823 of 2023)
[2023] KEBPRT 722 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 722 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E823 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
DECEMBER 15, 2023**

BETWEEN

ZOKOMO FOODS LIMITED APPLICANT

AND

JOSEPH MUGI KINUTHIA RESPONDENT

RULING

1. The tenant moved this tribunal vide a Notice of Motion under a Certificate of Urgency dated 23rd August, 2023. The application is supported by an affidavit dated 22nd August, 2023 in which the applicant deposes as follows in paragraph 12; -
 - “ 12. That being in the industrial business of manufacturing maize flour faces a lot of challenges in securing an alternative premises within a short period of time for the reason that KEBS also has to approve the new premises before granting another permit”
2. The Landlord respondent in his replying affidavit also deposes as follows at Paragraphs 6; -
 - “ 6. That the tenant rented the premises on 16th October 2019, installed machines but he did not comply with Kajiado County Government health regulations which required him to seal the premises in such a way that the dust from his manufacturing machineries does not spread to the outside and cause pollution to the environment.....”
3. We have perused the documents submitted and the statements above are a clear indication that the applicant herein is the maize flour manufacturing industry as sworn in the affidavits stated above. So, does this tribunal have the jurisdiction to hear disputes over industrial premises?



4. The Tribunal's jurisdiction is conferred by the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya in respect of controlled tenancies.
5. In the case of *Total Kenya Limited v Drumcon Kenya Limited* [2022] eKLR, it stated as follows; -

“7. The BPRT is a creature of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya. The preamble to the statute provides that 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” (emphasis mine).

8. Under Section 2, “controlled tenancy” means a tenancy of a shop, hotel or catering establishment let out under certain conditions. Shop means premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purpose of rendering services for money or money's worth.

“Hotel”, means any premises in which accommodation or accommodation and meals are supplied or are available for supply to five or more adult persons in exchange for money or other valuable consideration. “catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises.

9. The tribunal would only have had jurisdiction if the premises was a shop, a hotel or a catering establishment.”

6. It is clear from the filed affidavits that the tenancy of the suit premises herein is neither “a shop, hotel nor catering establishment” within the meaning and interpretation of section 2(1) of *cap 301*, Laws of Kenya and this Tribunal lacks jurisdiction to adjudicate over the instant dispute.
7. Although the issue of jurisdiction has not been raised by either party before us, we are entitled to consider it on our own motion at any stage of the proceedings in line with the Court of Appeal decision in *Jamal Salim v Yusuf Abdulabi Abdi & another* Civil Appeal No. 103 of 2016 [2018] eKLR where it was stated as follows: -

“Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another v Ulinzi Sacco Society Limited* [2002] 1 KLR 577, as follows;

- 1)
- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”



8. Consequently, this Tribunal has no option but to down its tools in line with the *locus classicus* case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989) eKLR where it was held as follows at pages 8-9/27: -

“..... 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

9. We therefore find and hold that this Tribunal has no jurisdiction to hear and determine the instant dispute and the same is a candidate for dismissal. The interim orders given in the matter on 30th August, 2023 having been issued in error ought to be discharged/set aside forthwith.

Orders

10. In conclusion, the following final orders commend to us;-
- This matter is struck out for want of jurisdiction and all Interim orders are discharged.
 - The tenant is at liberty to file the matter in the appropriate forum.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15th DECEMBER 2023.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(MEMBER)

In the presence of:

Ms. Kimathi for Tenant/Applicant

Muriuki h/b for Ms. Thongo for the Landlord/respondent.

