



**Francis v Kariuki (Tribunal Case E580 of 2023)
[2024] KEBPRT 454 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 454 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E580 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
APRIL 5, 2024**

BETWEEN

SAMUEL MWITI FRANCIS TENANT

AND

FRANCIS WANJOHI KARIUKI LANDLORD

RULING

Before considering the merits of this case, an issue of jurisdiction arises as follows:-

1. The tenant/applicant moved this tribunal vide a reference under Section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 7th June, 2023 with a Complaint that the landlord had unlawfully locked the business premises and denied the tenant access thereof, the landlord was attempting to illegally evict the tenant without giving proper notice contrary to Cap 301 Laws of Kenya.
2. In the application dated 7th June, 2023, the tenant states as follows in his supporting affidavit; -
 - “2. That I constructed and made developments therein befitting the nature of my intended business viz a church, and in conformity with the lease agreement and full knowledge and consent of the landlord/respondent. (Attached and marked “SMF 1” is a copy of a written agreement detailing the same”
3. In addition, the tenant in his supplementary affidavit dated 8th August, 2023 deposes that he filed a report at Mwiki Police Station vide OB No. 29/27/06/2023 in which he stated that he is the founder and pastor of SHINERS HOPE MINISTRIES reporting that his church was closed by the landlord herein.
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. The applicant herein is a church as stated above and according to the Oxford Advanced Dictionary, a Church is defined as follows: -

“A Christian house of worship, a building where Christian religious services take place”

6. It is therefore clear that the user of the suit premises 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 Abdulahi 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 vs. 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 Motor Vessel “Lillian S” – vs- 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 striking out. The interim orders given in the matter having been issued in error ought to be discharged/set aside forthwith.

Orders

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



It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5th DAY of APRIL 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Parties absent

