



**Ahmed v Mohammed (Tribunal Case E074 of 2023)
[2023] KEBPRT 708 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 708 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E074 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
OCTOBER 4, 2023**

BETWEEN

ABDU KASSIM AHMED TENANT

AND

ALI JUMA MOHAMMED LANDLORD

RULING

1. Before us are two applications dated 29th March 2023 and 8th June 2023. In the first application, the tenant prays for orders of injunction against the landlord from evicting, closing or interfering with his quiet possession, altering terms of tenancy and increasing rent of the business premises known as L.R No. MN/1/6550, Mombasa.
2. The application is predicated upon the grounds set out on the face thereof and the supporting affidavit sworn by the tenant. It is the tenant's contention that he entered into a lease agreement with the landlord over the suit premises in the year 2010 for purposes of storage of construction materials and equipment for his business with the annual rent payable being Kshs.420,000/-.
3. The landlord sought to increase the rent of the suit premises to Kshs.600,000/- but the tenant objected and drew a cheque of Kshs.420,000/- for the annual rent of 2023. The landlord despite accepting the cheque refused to deposit it and instead issued the tenant with a vacation notice. It is against the said background that the tenant moved to his Tribunal.
4. The application is opposed through the landlord's replying affidavit sworn on 20th April 2023 wherein it is deposed that the parties herein entered into a lease agreement over the suit premises in the year 2010 with the agreed rent being Kshs.420,000/- annually. The lease was renewable annually and in March 2022, a lease agreement was forwarded to the tenant by the landlord's advocates for execution but the tenant failed to do so or to return the same.



5. The tenant however continued occupying the suit premises but started defaulting in payment of rent and sometimes making intermittent payments as a result of which a demand notice for Kshs.220,000/- and a notice to vacate was issued on 1st September 2021 which is marked as annexure “AJM-1”.
6. On 21st March 2022, the landlord informed the tenant that he will be paying Kshs.600,000/- with effect from January 2023 failing which he was to vacate the suit premises by 15th January 2023. The tenant issued the landlord with a cheque No. 001023 for Kshs.600,000/- dated 31st January 2023 which the latter banked but the cheque was unpaid on the tenant’s instructions to his bankers. The cheque is marked “AJM-2”.
7. The tenant thereafter offered to pay Kshs.540,000/- as annual rent but the landlord declined insisting on a sum of Kshs.600,000/- as annual rent. On 13th February 2023, the tenant issued a cheque of Kshs.420,000/- to the landlord which the landlord rejected in view of the previous cheque for Kshs.600,000/- issued to him.
8. The landlord contends that he wants to renovate the suit premises with the aim of making it more habitable for his personal use and therefore requires the tenant to vacate therefrom. A notice to vacate dated 6th September 2021 was served.
9. According to the landlord, in absence of a lease agreement executed by parties for the years 2022 and 2023, there is not tenancy relationship and the Tribunal has no jurisdiction to hear and determine the matter in the premises.
10. The tenant is also accused of bringing these proceedings without the requisite locus standi.
11. In the second application dated 8th June 2023, the landlord seeks for an order for immediate delivery of vacant possession of the suit premises against the tenant and in default, the OCS Bamburi Police Station to provide security and ensure compliance.
12. The application is based on the grounds set out on the face of the application and the landlord’s affidavit of even date. The landlord relies on the notice to vacate dated 1st September 2021 and other correspondence exchanged between the parties earlier referred to and annexed to the supporting affidavit.
13. The application is opposed through the tenant’s replying affidavit sworn on unknown date in the year 2023 but filed on 12th July 2023 wherein it is denied that he was served with notice to terminate tenancy in the year 2021 as alleged by the landlord. He deposes that the landlord continued to accept rent for the year 2022 which superseded any alleged notice of termination.
14. The tenant contends that the landlord increased rent in an illegal and unprocedural manner contrary to section 4(2) of cap. 301, Laws of Kenya.
15. The tenant states that he has improved the suit premises to fit its use for storage of his construction materials and equipment and he was yet to fully realize returns on investment. He therefore opposes the landlord’s application on the grounds that it is intended to sanitize the landlord’s illegality of increasing rent and unlawful notice of eviction.
16. The applications were directed to be canvassed by way of written submissions together with the issues for determination set out below.
17. Based on the foregoing pleadings, the following issues arise for determination in this matter:-
 - a. Whether this Tribunal has jurisdiction to deal with this matter.



- b. Whether there exists a Landlord/Tenant relationship between the parties herein.
 - c. Whether the tenant is entitled to the reliefs claimed in the application dated 29th March 2023.
 - d. Whether the landlord is entitled to the reliefs prayed for in the application dated 8th June 2023.
 - e. Who is liable to pay costs of the suit?
18. This Tribunal's jurisdiction is donated by cap. 301, Laws of Kenya and is exercised in respect of controlled tenancies which are defined in section 2(1) of the Act to mean:-
- “.....a tenancy of a shop, hotel or catering establishment-
- a. Which has not been reduced into writing or
 - b. Which has been reduced into writing and which-
 - i. Is for a period not exceeding five years or
 - ii. Contains provision for termination otherwise than for breach of covenant within five years from the commencement thereof or
 - iii. Relates to premises of a class specified under sub Section (2) of this Section”.
19. A shop is defined to mean “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”.
20. At paragraph 2 of his supporting affidavit, the tenant deposes as follows:-
- “2. That on or about the year 2010, I entered into a lease agreement renewable every year with the Landlord herein for premises situated L.R No. 6550/1MN for purposes of storage of construction materials and equipment used for my business”.
21. At paragraph 11 of his replying affidavit to the application by the landlord, the tenant states as follows:-
- “11. That I have heavily invested in the premises fitting the use of the premises, storage of my construction materials and equipment and I am yet fully realize the returns of my investment”.
22. In the case of *Total Kenya Limited vs. Drumcon Kenya Limited* (2022) eKLR at paragraph 13, the learned Judge cited with approval the decision in the case of *Panesar – vs- Balbir* (1972) EA 208 wherein the court of appeal had the following to state:-
- “There is something termed as lease for manufacturing purposes (S.106 of the Transfer of property Act of India) and the lease here was such a lease. The long title to the Act refers only to shops, hotels and Catering establishments) not to factories or premises for manufacturing goods”.
- “Mustafa J.A who wrote the unanimous decision further stated as follows:-
- “I am also of the view that “premises occupied....for the purposes of rendering services for money or money's worth” would be applicable to offices like those of



advocates, accountants, manufacturers, barbers and so forth and cannot apply to a factory or the suit premises”.

23. Based on the above guidance, we find and hold that this Tribunal is devoid of jurisdiction to deal with the suit premises which is merely used as a store for construction materials and equipment of the tenant as admitted in his two affidavits aforesaid.
24. In line with the decisions in the cases of Owners of Motor Vessel 'Lillian S – vs- Caltex Oil (k) Ltd (1989) e KLR and Phoenix of East Africa Assurance Co. Ltd – vs- S.M. Thiga T/A Newspaper Service (2019) eKLR, this Tribunal ought to down tools in absence of jurisdiction to adjudicate over the instant dispute.
25. Consequently, the applications by the tenant and landlord dated 29th March 2023 and 8th June 2023 respectively are hereby struck out for want of jurisdiction.
26. As none of the parties raised the point of jurisdiction based on the foregoing reasoning, we shall exercise our discretion under Section 12(1)(k) of Cap. 301, Laws of Kenya to order each party to meet own costs of the suit.
27. In conclusion therefore the following final orders commend to us in this matter:-
 - a. The application dated 29th March 2023 and 8th June 2023 are hereby struck out for want of jurisdiction.
 - b. The interim orders given herein on 29th March 2023 and 23rd May 2023 are hereby discharged/ vacated.
 - c. Each party shall meet own costs of the suit.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 4TH DAY OF OCTOBER 2023.

HON. GAKUHI CHEGE HON. JOYCE OSODO

CHAIRPERSON (MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

