



**Nduku v Waruguru (Tribunal Case E054 of 2023)  
[2024] KEBPRT 1122 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1122 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E054 OF 2023  
P KITUR, MEMBER  
MAY 27, 2024**

**BETWEEN**

**AGNES NDUKU ..... APPLICANT**

**AND**

**CHRISTINE WARUGURU ..... RESPONDENT**

**RULING**

**A. Parties And Background**

1. The Applicant claims to have entered into an agreement to the sharing of rental space in Meru at a premise known as Kigea Building with the Respondent herein.
2. The Applicant acts in person.
3. The Respondent is represented by the firm of Mayia Juma & Associates Advocates.

**B. The Dispute Background**

4. The Applicant and Respondent appear to have entered into what can be described as a co-tenancy agreement over a shop located in Kigea Building in Meru County.
5. This is however disputed by the Respondent who states that she did sublet the premises but to one Dennis Mulwa and not the Applicant, who she describes as a shop attendant. It is not clear from the Respondent's description whose attendant exactly the Applicant was between herself and Dennis Mulwa.
6. The Applicant avers that as part of the co-tenancy, she agreed with the Respondent to pay a sum of Kshs. 75,000/= being goodwill, of which she paid Kshs. 40,000/=. She further avers that Kshs. 35,000/= was to be paid in July 2023, which never came to be as the Respondent refused to take the payment.



7. The Applicant states that upon restocking to the tune of Kshs. 250,000/= she was locked out of the premises by the Respondent which led her to filing of suit at Meru Small Claims Court Case No. E415 OF 2023, which was struck out for want of jurisdiction, upon which the Applicant filed the Complaint herein together with the Application dated 24<sup>th</sup> November 2023 seeking among others, an order for reopening of the business premise so she could resume her operations.
8. In response, the Respondent filed a Replying Affidavit sworn on 24<sup>th</sup> December 2023 and a Notice of Preliminary objection dated 22<sup>nd</sup> February 2024 raising two points of law, that there is no tenancy relationship between the parties and that the Respondent since moved out of the premises and therefore the tenancy relationship with the Landlord ceased to exist.
9. Parties took directions and agreed to dispose of the Notice of Preliminary Objection by way of Written Submissions which were duly filed by both parties.

### C. List Of Issues For Determination

10. Having given full consideration to the Preliminary Objection raised, the issue for determination is;
  - i. Whether this Tribunal has Jurisdiction to hear and determine the matter

### D. Analysis And Findings

11. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to first make a determination whether it is clothed with jurisdiction in the matter. In the case of Owners of the Motor Vessel ‘Lillian’ (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:
 

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
11. The question therefore arising is whether there exists a tenancy relationship between the Applicant and the Respondent subject to the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
12. In the present case, what has been produced is a hand written note produced by the Applicant acknowledging receipt of Kshs. 40,000/= as part payment of goodwill for shop sharing of the suit premises as from 1<sup>st</sup> April 2023. The note does not state who the Respondent received it from and who exactly will be sharing the premises with the Respondent. It is however executed by the parties herein without disclosing capacity.
13. The Respondent states that she did not enter into that space sharing agreement with the Applicant, but rather with one Dennis Mulwa, who the Respondent states she refunded the goodwill less a contribution of the shared monthly rent. She produced an M-Pesa statement showing a transfer of a sum of Kshs. 33,000 to one Denis Peter.
14. The Respondent additionally avers that she left the premises, is no longer a Tenant and that there now is a new tenant in the premises. This position has not been rebutted or challenged by the Applicant. It is settled that where a Tenancy relationship has come to an end, then the tribunal ceases to have jurisdiction over any dispute arising.
15. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of



Pritam vs. Ratilal and Another Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated 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.”

11. While I do acknowledge the confusion this may cause the Applicant, she may need to consider instituting recovery proceedings in a proper forum for her goods or their worth as against the Respondent.
12. I therefore proceed to order as follows;

#### **E. Orders**

- a. The Respondent's Preliminary Objection is hereby upheld.
- b. The Applicant's Complaint and Application are hereby struck out.
- c. Costs are awarded to the Respondent assessed at Kshs. 5,000/=.
- d. File is marked as closed.

**HON P. KITUR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 27<sup>TH</sup> DAY OF MAY 2024 IN THE PRESENCE OF MAYIA FOR THE RESPONDENT AND THE ABSENCE OF THE APPLICANT.**

**HON P. KITUR**

**BUSINESS PREMISES RENT TRIBUNAL**

