



**Mutisya v Njoroge & another (Tribunal Case E654 of 2024)
[2024] KEBPRT 1418 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1418 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E654 OF 2024
CN MUGAMBI, CHAIR
SEPTEMBER 23, 2024**

BETWEEN

YVONNE MUTISYA TENANT

AND

ANDREW KAMAU NJOROGE 1ST RESPONDENT

CHARLES KAMAU KAGUMA 2ND RESPONDENT

RULING

Introduction

1. The Tenant's Complaint against the Respondents is that the Landlord's agent, the 1st Respondent has threatened to evict the Tenant from the suit premises using unscrupulous means and further that the Agent has refused to disclose to the Tenant the contacts of the Landlord who resides in the United States of America.
2. The Tenant has also filed a Complaint wherein he seeks orders that the tenancy be reinstated for the period in the lease agreement and the court issues restraining orders against the Respondent.
3. The Tenants Amended motion dated 5.8.2024 seeks orders that the Tenant be granted lawful continuous possession of the suit premises, that the Respondents be restrained from interfering with the tenancy and that the Tenant be declared the lawful Tenant of the premises.
4. The Application is supported by the Tenants' affidavit and opposed by the affidavit of the 1st Respondent sworn also on behalf of the 2nd Respondent.

The Respondents notice of Preliminary Objection

5. The Respondents notice of Preliminary objection dated 5.8.2024 is brought on the grounds;



- a. That the Tribunal does not have jurisdiction on a residential premises dispute.
 - b. That as per the lease agreement dated 28.3.2023, between the parties, all disputes were to be referred to arbitration.
6. The Respondents having challenged the jurisdiction of the Tribunal, I have to determine whether or not the court has the requisite jurisdiction to hear and determine this dispute for the reason that if, I proceeded without jurisdiction, I would be engaging in an exercise in futility, a nullity.
 7. Both parties to this dispute agree that their relationship is governed by the tenancy agreement dated 28.3.2023. On the face of the lease/tenancy document, it states it is a lease of House No. 179 (Kanjaro court) located in Golf Course 1. Clause 5 (iv) of the tenancy agreement (hereinafter, the agreement) provides as follows;-
 - “(iv) To use the premises for private residential purposes only and not to carry on any form of business therein or use the same as a lodging or boarding house or for any other unauthorized purpose without the prior written consent of the landlord or its authorized agent. Note, the premises shall not be sublet or used as AIR BNB.”
 8. It is therefore clear that the suit premises were to be used for private residential purposes only and no other form of business was to be carried out thereon. A plain reading of the Act, Cap 301 of the Laws of Kenya will show that the Business Premises Rent Tribunal only deals with premises of a commercial nature and dwelling houses are excluded.

Section 2(1) of Cap 301, provides as follows;-

- “(1) For the purposes of this Act, unless the contract otherwise requires, “catering establishment means any premises on which is carried out the business of supplying food or drinks for consumption or such premises by persons other than those who reside and are boarded on such premises
Controlled tenancy means 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 a 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 subsection (2) of this Section.”
9. The same Section has defined an “Hotel” to mean 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.
A “Shop” has also been defined to mean a 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.



10. The agreement between the parties herein restricted the use of the suit premises “to private residential purposes” and proceeded to prohibit the Tenant from carrying out any other business in the suit premises without the permission of the Landlord. Clearly, the private residential purposes do not answer to the definition of a catering establishment, a shop or an Hotel as defined under Cap 301. The premises are therefore neither a shop, a catering establishment nor an hotel and the tenancy between the parties is therefore not a controlled tenancy as described/defined under Section 2 of Cap 301.
11. Section 12(4) of Cap 301 only gives powers to the Tribunal to investigate complaints relating to controlled tenancies. The said Section provides as follows;-

“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as it deems fit.”
12. The tenancy between the parties having been found not to be a controlled tenancy, the Tribunal has no jurisdiction to hear and determine this dispute; and in the words of the court in the case of Owners of Motor Vessel “Lillian SS” vs Caltex Oil Kenya Ltd [1989] KLR 1.

“...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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
13. The upshot of the above is that the Tenant’s Reference/Complaint to the Tribunal and the Application filed therewith are dismissed with costs to the Respondents. File is ordered closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF SEPTEMBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mrs. Njagi for the Tenant and Ms. Kamau for the Respondents.

