



**Marlink Ventures v Miliki Limited (Tribunal Case E343 of 2023)
[2023] KEBPRT 727 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 727 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E343 OF 2023
A MUMA, AG. CHAIR
NOVEMBER 21, 2023**

BETWEEN

MARLINK VENTURES TENANT

AND

MILIKI LIMITED LANDLORD

RULING

1. The Tenant/Applicant (hereinafter referred to as “the Tenant”) has rented out the business premises known as Cocobongo Disco to be situate on Kwale/Diani – Complex 21 (hereinafter referred to as “the premises”)
2. The Firm of Rachier & Amollo LLP appears for the Tenant.
3. The Landlord/Respondent (hereinafter referred to as “the Landlord”) has let out the premises to the Tenant.
4. The Firm of A.G.N Kamau Advocates appears for the Landlord.

Dispute background

5. The Tenant is aggrieved by the Landlord’s decision to evict them from the premises. On the other hand, the Landlord contends they issued the Tenant with a Notice to Terminate Tenancy on the grounds enumerated therein.

The tenant’s case

6. The Tenant approached this Tribunal vide an application dated 3rd April 2023. The Tenant outlined various grounds in their Notice of Motion including that the Landlord had disregarded the provisions of their Tenancy agreement.



7. The Tenant alleged that the Landlord had issued an “illegal” Notice of Termination of Tenancy dated 25th January 2023. The Tenant also expressed her apprehension that they faced imminent eviction from the suit premises.
8. They further stated that the Landlord had proceeded to disconnect the electricity supply to the premises and that the eviction was in contravention of the Constitution and statutory laws among other claims
9. The Tenant additionally filed a Replying Affidavit dated 24th May 2023 where they mainly reiterated the contents of her application and added that the Landlord had forcefully gained entry into the premises and carted away furniture and business stock which action was allegedly reported to the police.
10. The Tenant filed a Further Affidavit and Submissions both dated 31st August 2023.

The landlord’s case

11. The Landlord purported to file a Reference dated 13th April 2023 in this same matter that was accompanied by an application dated 6th April 2023 wherein they stated that the Tenant had already been ejected from the premises.
12. It is the landlord’s case that the Tenant has abused the court process since there is a pending suit serialized as Kwale Chief Magistrate Environment Case Number E023 of 2023 where orders restraining the Tenant from trespassing, accessing or dealing in any manner with the said premises.
13. The Landlord further challenges the jurisdiction of this Tribunal to hear and determine this matter since the Tenant is no longer in the premises.
14. The Landlord filed Submissions dated 9th June 2023.

Issues for determination

15. From the background and the parties’ respective cases provided hereinabove, the following issue commends itself for determination:
 - i. Whether this Tribunal possesses the requisite jurisdiction to hear and determine this matter?

Whether this Tribunal possesses the requisite jurisdiction to hear and determine this matter?

16. I have given full consideration to the Applications, the Replying Affidavit in response thereto and the parties respective Submissions.
17. I will first deal with the question of jurisdiction as this lies at the heart of any matter before this Tribunal. The Preamble of the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301 (“the Act”) dictates the objects of the Act as follows;

“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.” (emphasis added)
18. Further the Act defines a “tenant” as “in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant.”
19. From the pleadings provided in this matter and the inspection report dated 19th May 2023, it is clear to me that the Tenant has already been evicted from the suit premises and no longer conducts their



business there. Furthermore, there is already a new Tenant occupying the premises and conducting business there.

20. Accordingly, the Tenant herein is not a Tenant as per the provisions of the Act. Therefore, there was no landlord-tenant relationship between the Tenant and the Landlord herein.
21. I find it prudent to cite the decision in *Pritam V Ratilal and Another* (1972) EA 560 where the Court stated as follows:

“As stated in the *landlord and Tenant (Shops, Hotels and Catering Establishments) Act* itself, it is an Act of Parliament to make provision with respect premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this special legislation is to provide extra and special protection for tenants. A special class of tenants is created. 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”. (Emphasis added)

22. Where a landlord-tenant relationship does not exist, the Tribunal has no jurisdiction and as pronounced in the landmark case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR;

“Jurisdiction is everything. Without it, a court has no power to make one more step.”

22. With that, I have no option but to down my tools. This is not the appropriate forum for the parties herein to argue out their cases. In any event a suit has been filed at the Magistrates court which the parties can pursue accordingly.

Determination

22. In the upshot, I find that this Tribunal lacks jurisdiction to deal with the dispute herein and proceed to issue the following orders:
 - a. The Reference and Application dated 3rd April 2023 are hereby dismissed;
 - b. Each Party shall bear their own costs of this Reference

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 21ST OF NOVEMBER 2023 DAY OF NOVEMBER 2023 IN THE PRESENCE OF MWAURA FOR THE LANDLORD AND ONGORO FOR THE TENANT.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

