



**Metasebia v Jafra Limited & another (Tribunal Case E643 of 2024)  
[2024] KEBPRT 1431 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1431 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E643 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
SEPTEMBER 23, 2024**

**BETWEEN**

**SILESHI METASEBIA ..... APPLICANT**

**AND**

**JAFRA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL K. MBURU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling is on the notice of preliminary objection by the Landlord dated 24/06/2024. The same is on the grounds that:-
  - a. That this Honourable Tribunal lacks jurisdiction to entertain both the reference and the Application given that the premises is not a shop, hotel or a catering establishment under cap 301 but rather a residential or dwelling place
  - b. That this suit has been brought to this court in clear disregard of the jurisdiction of this Tribunal and is an abuse of the due process of the court
2. The Tenant applicant was afforded sufficient opportunity to respond to the said notice and render oral submissions in opposition to the same but was not responsive. This court therefore heard the respondents and retired to prepare to render this Ruling
3. The twin issues for determination are whether this court has jurisdiction to superintend over this matter when it is alleged that the material premises is a dwelling and/or residential premises and secondly on the grounds that the Tenant voluntarily and without notice left the premises.



4. The assertion that the demised premises are a dwelling one are said to be founded on clause 7(a) of the lease agreement between the parties dated 1/8/2023 and marked “EWB-1”. The clause 7(a) reads thus:-

“The landlord agrees to ensure that the premises is fit for human habitation at the effective date and kept fit for human habitation during the term of the lease”.
5. In our respective view, all premises, including shops, hotels and catering establishments require to be fit for human habitation. Therefore, the wording of clause 7(a) of the lease agreement could not have been addressing the habitation of a dwelling or residential premises in exclusion of others.
6. In plain language, we are determining that clause 7(a) of the said lease agreement is not in any way in conflict with section 2(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301) hereinafter “the Act”
7. The Respondents have asserted that the Tenant voluntarily and without notice vacated the demised premises. It was their evidence that the Tenant carted away all goods from the demised premises except for a few items and which they have safely stored for collection by the Tenant on payment of the requisite storage charges.
8. The respondents’ evidence which was not resisted in any way is that on the tenant vacating the demised premises, they renovated the same and that they have since installed a new tenant. Though no evidence on the latter was offered, we have no reason to doubt the same.
9. In view of the above, we find that by the action of the tenant of vacating the demised premises, the landlord/tenant relationship thereof was effectively terminated. In the absence of that relationship, the jurisdiction of this court is ousted.

We find support for this position from the case of;- Pritam -VS- Ratilal & Another (1972) EA where it was held that;-

“Therefore, the existence of a relationship of landlord and tenant is pre-requisite to the application of the provisions of the Act. Where such a 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 the 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”.

10. It is also not lost on us that according to the parties, the tenancy agreement dated 1/8/2023, was to lapse effective the 24/7/2024. In that regard, the relationship between the parties has also terminated by effluxion of time.
11. We also need to address the question of costs in this matter. In our view, each party shall bear own costs. This is for the reasons that the landlord who is the successful party herein has admitted to being in breach of the law by taking the demised premises without an order of this court. They therefore cannot benefit from costs which they could otherwise be entitled to.
12. In the final analysis, we make the following orders;-
  - a. That the notice of Preliminary Objection by the landlord dated 24/6/2024 is upheld and consequently the tenant’s suit is struck out
  - b. The landlord shall unconditionally release to the Tenant all his goods with immediate effect.



c. That each party shall bear own costs of the suit.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF  
SEPTEMBER, 2024**

**HON. NDEGWA WAHOME, MBS**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**AND**

**HON. JOYCE MURIGI**

**(MEMBER)**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of:

Mr. Mwangi for the Applicant/Tenant

N/A for the Landlord/Respondent

