



Ali v Kamau (Tribunal Case 51 of 2020) [2024] KEBPRT 1368 (KLR) (14 June 2024) (Judgment)

Neutral citation: [2024] KEBPRT 1368 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 51 OF 2020
P MAY, MEMBER
JUNE 14, 2024

BETWEEN

MOHAMED ALI TENANT

AND

MONICAH WAMBUI KAMAU RESPONDENT

JUDGMENT

1. The present proceedings commenced through the tenant's reference Tenant filed a Reference on 27th August, 2020, challenging a notice allegedly issued by the landlord on 30th July 2020.
2. The parties had filed numerous interlocutory applications which have been dispensed with and the Tribunal set down the hearing of the reference. Each of the parties called witnesses who testified in support of their respective positions as summarized below:

Tenant's case:

3. The tenant stated they entered into a lease with one Leah Mukami in 2005 which allowed them to set up their butchery business. The lease was reduced into writing in 2010 and that he has been paying rent as when it falls due and complying with other contractual obligations which formed part of the lease.
4. During cross- examination, he maintained that there existed a tenancy relationship between them and Leah Mukami. He stated that there had been oral threats to evict them from the demised premises. He maintained that he had never occupied Monicah's space.
5. The tenant stated that the space they were occupying belonged to the said Leah Mukami and were commercial. The respondent herein was therefore not their landlord. They therefore prayed for the reference to be allowed as prayed.



Respondent's case

6. The respondent stated that she did not know Mohamed and there was no relationship between them. She confirmed that he was let the premises by one Leah Mukami but had encroached into her premises. She averred that she had made attempts to rectify the title but the process was taking long.
7. During cross examination she confirmed that her advocate had written to the tenant asking him to clear the rent but wondered under what premises he had made the demand. She also confirmed that she sent auctioneers to move Mohamed and erected a wall at the back. She stated that she undertook this in compliance with the orders issued by Justice Omondi.

Analysis

8. The parties upon closing their respective cases filed submissions in support of the evidence tendered. I have considered the evidence on record and the submissions filed and wish to proceed as follows:
9. The key issues for determination are whether there exists a tenancy relationship between the parties herein and subsequently whether the reference is merited.
10. On the first issue, it is prudent to restate that the tribunal's jurisdiction is circumscribed under section 2(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act that the tribunal can only adjudicate on disputes emanating from controlled tenancies. A controlled tenancy is defined as a tenancy of a shop, hotel or catering establishment which has been reduced into writing and which is for a period not exceeding five years.
11. The Supreme Court in its advisory opinion, In the Matter of advisory opinion of the Supreme Court, Constitutional Application [No. 2 of 2011](#), restated the principle in the "Motor Vessel "Lillian S case", in the following terms –

“The “Lillian S” case [1989] KLR, establishes that jurisdiction flows from law and the recipient court is to apply the same with any limitation embodied therein. Such a court may not arrogate to itself jurisdiction through craft of interpretation or by way of endeavor to discern or interpret the intention of Parliament where the wording of legislation is clear and there is no ambiguity”.
12. The preamble to the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), reads 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 and for matters connected there with and incidental thereto.”
13. The tribunal's construction of the title of this Act together with the content of the preamble (supra) is that, this Act deals specifically with the landlord and tenant relationships in relation to structures standing on the land. The mandate to resolve disputes arising from dealings in relation to such structures is exclusively vested in the Business Premises and Rent Tribunal in terms of section 12 of the Act.
14. Section 12(4) of cap 301, Laws of Kenya confers this tribunal jurisdiction to investigate any complaint relating to a controlled tenancy made to it by the landlord/tenant and make such order thereon as it deems fit. As such, the first qualification as earlier observed is that there must be in existence a landlord and tenant relationship.



15. The present proceedings were instituted to challenge a purported notice issued by the respondent herein. The respondent has denied ever issuing such a notice. The tenant has also relied upon the other pieces of evidence to prove that there have been threats by the landlord who has previously issued demands through her advocates.
16. It is clear that there was a dispute between the respondent and the original landlord on the ownership of the demised premises, a matter which has been litigated upon in other courts. The questions of ownership cannot be determined by this Tribunal as the same do not fall within the purview of the jurisdiction of the Tribunal.
17. The landlord has failed to demonstrate the exact point at which the tenant encroached her property. She has admitted to having proceeded with evictions while the titling documentation was in place. There is no reference to any lawful application made in support of such a drastic action. The auctioneer who was engaged proceeded on the same compromised path whose foundation was quick sand.
18. The issuance of the notice even though denied, if considered against the other facts which have been admitted to by the landlord including the fact that she procured the services of an auctioneer to commence eviction clearly shows that the tenant was justified in approaching the Tribunal. The reference filed was therefore merited.
19. In the circumstances, the reference dated 27th August, 2020 is allowed with costs awarded to the tenant assessed at Kshs. 100,000/-. The notice of termination dated 30th July, 2020 is quashed for being a nullity.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF JUNE, 2024

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Muchiri for the Respondent and Otwal for the Tenant

