



Kiptoo t/a Bravion Pharm Chemist v Kaino & another (Tribunal Case E108 of 2023) [2024] KEBPRT 579 (KLR) (Civ) (23 April 2024) (Ruling)

Neutral citation: [2024] KEBPRT 579 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E108 OF 2023
P MAY, MEMBER
APRIL 23, 2024**

BETWEEN

EDWIN KIPTOO T/A BRAVION PHARM CHEMIST TENANT

AND

SAMMY KIPRUTO KAINO 1ST RESPONDENT

ALLAN & BRADLEY COMPANY LIMITED 2ND RESPONDENT

RULING

1. The application before me is the tenant's notice of motion dated 15th November, 2023. The tenant sought for orders of temporary injunction and an order to determine who could receive rent between the 2 respondents. The application was premised on the grounds that the 1st Respondent had illegally instructed auctioneers to levy distress for non- existing rent arrears.
2. The application has been opposed by the 1st Respondent who stated that the agreement was reduced into writing hence the dispute does not fall within the ambit of the Tribunal. The parties elected to canvass the application by way of written submissions. I have considered the submissions on record and the pleadings filed and would proceed as follows:
3. The jurisdiction of the Tribunal has been challenged. It is therefore is my cardinal duty to interrogate the issue and satisfy myself before making any further step in line with the decision in the celebrated case of; Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited [1989] eKLR where it was held at page 8- 9/27 as follows:-

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before



it. 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist.

Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

“

4. As was stated by the Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...”

5. The Tribunal is a creature of statute with powers to determine disputes over controlled tenancy. Controlled tenancy is defined under section 2 of Cap 301 as follows:

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 provision for termination, otherwise than for breach of covenant, within five years from commencement thereof; or
 - iii. Relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the government, the community or a local authority is a party, whether as Landlord or as tenant, shall be a controlled tenancy.

6. The landlord alluded to the existence of an agreement but the same has not been adduced. The Tribunal agrees with the tenant therefore that the landlord has failed to discharge their duty to prove as per section 109 of the Evidence Act.



7. I will now turn to the merits of the prayers sought. The same have to be assessed against the triple requirements set out in the locus classicus of *Giella vs Cassman Brown*. The tenant has stated that he has been in long occupation of the demised premises. He has been paying rent as when it fell due. He however received communication that he was supposed to remit rent to the 2nd Respondent who has elected not to participate in the present proceedings. The tenant has also expressed their willingness to pay rent provided the Tribunal makes a determination on who should receive rent.
8. In light of the above, the tenant has proved that he has a prima facie case. If the proclamation done by the 1st Respondent is allowed to persist, then the same shall cause him prejudice. The question of who is entitled to receive rent can only be determined during the hearing of the reference.
9. The upshot of the above is that the application dated 15/11/2023 is allowed in the following terms:
 - a. The tenant is granted an order of temporary injunction as per 2nd prayer of the application.
 - b. The parties to file and exchange a paginated bundle of documents that they wish to rely on during hearing within 14 days with the landlord attaching the most recent proof of ownership of the demised premises.
 - c. The 2nd Respondent to be served with a copy of this ruling and the hearing date.
 - d. Each party shall bear their own costs.

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

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of; Wambua for the Tenant/Applicant and

Kosgei for the Landlord/Respondent

