



Kivotot t/a Lush Nutrition & Wellness v Pacific Crest Limited & another (Tribunal Case E1221 of 2024) [2024] KEBPRT 1641 (KLR) (26 November 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1641 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1221 OF 2024
A MUMA, MEMBER
NOVEMBER 26, 2024**

BETWEEN

JOHNSEY KIVOTOT T/A LUSH NUTRITION & WELLNESS TENANT

AND

PACIFIC CREST LIMITED LANDLORD

AND

EXPEDITIOUS AUCTIONEERS RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant, Johnsey Kivotot T/A Lush Nutrition & Wellness, is the Tenant of the Suit Premises erected on L.R No. 12715/224 within Nairobi County (hereinafter the “Tenant”).
2. The Applicant appears in person in this matter.
3. The 1st Respondent, Pacific Crest Limited, is the lawful owner of the suit premises and hence the Landlord (hereinafter the “Landlord”).
4. The 2nd Respondent is an auctioneer instructed by the Landlord to levy distress for rent against the Tenant and hence an agent of the Landlord.
5. The firm of Kisaka & Shalle Advocates, LLP represents the Interested the Respondents in this matter.

B. Background Of The Dispute

6. The Tenant moved this Court vide a Reference and Application dated 6th November 2024 seeking Orders compelling the Landlord to open the suit premises and restraining it from disconnecting



electricity, harassing and evicting the Tenant and restraining the 2nd Respondent from levying distress for rent.

7. Having considered the Tenant's Reference and Application, this Court issued interim Orders compelling the Landlord to open the suit premises and restraining it from disconnecting electricity, harassing and evicting the Tenant and restraining the 2nd Respondent from levying distress for rent.
8. In response to the Tenant's Application, the Landlord filed a Notice of Preliminary Objection dated 14th November 2024 and subsequently, a Replying Affidavit dated 19th November 2024.
9. It is the Landlord's Notice of Preliminary Objection that is the subject of the Ruling.

C. The Landlord's Claim

10. In its Replying Affidavit dated 19th November 2024, the Landlord claims that it entered into a tenancy agreement with the Tenant on 6th June 2022 for a term of 5 Years 3 Months.
11. Further, the Tenant avers that the Tenant has breached the tenancy agreement by failing to pay rent as required under the Lease and is in rent arrears of KShs. 252,000 as at 30th October 2024. The Tenant has remained in default despite being served with a demand letter dated 30th October 2024, necessitating it to proclaim and distress for rent to recover the said arrears.

D. Jurisdiction

12. The Landlord contested the jurisdiction of this Tribunal on the grounds that there exists a tenancy agreement which is for a term of 5 Years 3 Months and does not contain a termination clause other than for breach. As such, the Landlord prays that the Tenant's Reference and Application dated 6th November 2024.

E. List Of Issues For Determination

13. The issues that fall for determination is as follows;
 - a. Whether the Tribunal has jurisdiction to hear the application by the Interested Parties following the issue of Res Judicata submitted upon.

F. Analysis & Determination

14. This Honourable Tribunal has the duty to interrogate the question of jurisdiction and satisfy itself before making any further step in line with the celebrated case of Owners of the Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited [1989] eKLR where the Court of Appeal held 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”



15. 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. ...”

16. The jurisdiction of the Business Premises Rent Tribunal is governed by the Landlord and Tenant Shops Hotels and Catering Establishments Act Cap 301 Laws of Kenya (hereinafter the Act) and can only be exercised in the existence of a controlled tenancy. The preamble to the Act states that:

“It is an Act of Parliament to make provisions with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”

17. Section 2 of Cap 301 defines a controlled tenancy, I have carefully perused the tenancy agreement produced by the Landlord herein and do confirm that the Tenant is for a period of more than 5 years and that it does not contain a termination clause other than for breach of covenant.
18. In the circumstances, I am convinced that this Court lacks jurisdiction to hear and determine this matter. As such, it has to down its tools.

H. Orders

19. In the upshot, the following Orders shall abide:
- Landlord’s Notice of Preliminary Objection dated 14th November 2024 is hereby allowed.
 - The Tenant’s Reference and Application dated 6th November 2024 are hereby dismissed.
 - Each Party shall bear its own costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 26th day of November 2024 in the presence of Kisaka for the Landlord and Johnsley Kivoto, the Tenant in person.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

