



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. 741 OF 2020 (NAIROBI)

POWER GENERAL

CONTRACTORS LIMITED..... APPLICANT/LANDLORD

VERSUS

THE PHARMACY AND

POISONS BOARD..... TENANT/RESPONDENT

RULING

1. By a notice of preliminary objection dated 5th February, 2021, the Tenant/Respondent contends that this Tribunal is divested of jurisdiction to entertain this matter as per section 2 of the Landlord and Tenant (shops, hotels and catering establishments) Act.
2. The Landlord instituted the suit vide a Reference dated 3rd August, 2020 in which he complains that the Tenant failed to pay rent and service charge due and payable to it and now owes Kshs.3,189,600/- exclusive of VAT as at August, 2020 despite being in possession of the demised premises since 29th May, 2019.
3. It is the Landlord's case that the Tenant has failed, refused or otherwise neglected to honour the terms and conditions of the agreement with the Landlord or pay the amounts owing as rent and service charge despite demand for payment being issued.
4. The Landlord filed a notice of motion dated 3rd august, 2020 seeking recovery of possession and payment of arrears of rent and service charge aforesaid from the Tenant in respect of the demised premises.
5. According to the Landlord, by a letter of offer dated 30th January, 2019 it offered the demised premises to the Tenant/Respondent which responded by a letter dated 8th May, 2019 and the handing over was done on 29th May, 2019 as per the handing over certificate annexed to the supporting affidavit.
6. The Landlord/Respondent filed a replying affidavit to the notice of preliminary objection on 22nd February, 2021 stating that the Respondent is a creature of section 3 of the PHARMACY AND POISONS ACT as a body corporate capable of suing and being sued in its name and is not a government within the meaning and interpretation of section 2 of the LANDLORD and TENANT (shops, Hotels and catering Establishments) Act, Cap 301 Laws of Kenya.
7. The constitution of Kenya according to the Landlord establishes only two levels of government Viz National and County Governments and the Respondent is neither of the two.
8. I have looked at the pleadings as well as submissions filed by both parties in respect of the preliminary objection and observe as follows:
 - i. The Respondent/Tenant is a creature of Section 3 of the PHARMACY AND POISONS ACT and is a body corporate capable of suing and being sued.
 - ii. The Respondent/Tenant is not government as contemplated in section 2 of the Landlord and Tenant (shops, Hotels and Catering establishments)Act, Cap 301 Laws of Kenya as read with section 3 of the interpretation and General provisions Act.
 - iii. The Respondent/Tenant is capable of entering into independent contracts with private entities without the necessity of Attorney

General being a party to such contracts.

iv. The Government proceedings Act is not applicable to the instant proceedings.

v. The Respondent is an independent agency of government with mandate to undertake certain functions which cannot be adequately or efficiently be performed within the structure of Government and is not in any way government as contended by it.

9. In conclusion therefore, I hold that the preliminary objection is misconceived incompetent and bad in law. The same is a candidate for dismissal and I proceed to dismiss it with costs to the Landlord.

10. The matter shall be set down for hearing of the application interpartes.

it is so ordered.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

DATED, SIGNED & DELIVERED this 4TH day of JUNE 2021.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Miss Waiganjo for the Landlord/Applicant

Miss Kwanga for Tenant/Respondent