



**Ngotho v Karani & another (Tribunal Case E034 of 2024)  
[2024] KEBPRT 1867 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1867 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E034 OF 2024  
P KITUR, MEMBER  
OCTOBER 8, 2024**

**BETWEEN**

**GEORGE MWAURA NGOTho ..... TENANT**

**AND**

**STEPHEN MACHARIA KARANI ..... 1<sup>ST</sup> RESPONDENT**

**TEGEMEO PROPERTIES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Introduction**

1. The Applicant George Mwaura Ngotho is the Tenant occupying the suit property (hereinafter referred to as the 'the Tenant').
2. The 1<sup>st</sup> Respondent Stephen Macharia Karani is the Landlord who is the proprietor of the suit property (hereinafter referred to as the 'Landlord').
3. The 2<sup>nd</sup> Respondent is Real Estate Management Agency who in the instant suit manages the suit property on behalf of the 1<sup>st</sup> Respondent (hereinafter referred to as the 'Agent').

**B. Background**

4. The Applicant/Tenant and the Landlord have been in a tenancy relationship since 2012 with respect to the suit property known as Land LR 17/18 Nakuru.
5. The Tenant/Applicant sublet the suit premises to Juliana Waruguru.
6. The Landlord appointed the 2<sup>nd</sup> Respondent as his Agent who is obligated to manage the suit property on his behalf. Some of the obligations include inter alia the collection of rent due to the Landlord.



7. The Agent upon assuming the Management role of the Suit premises started issuing new agreement and subsequently lease the premises to new tenants. This move also cancelled all prior tenancy agreements including the one entered into between the Tenant/Applicant George Mwaura and the Landlord.
8. The Landlord states that there is no existing tenancy relationship between the Tenant and the Landlord over the suit property and instead stated that they only acknowledge the tenancy between Juliana Waruguru and the Landlord and that the said Juliana Waruguru continues paying rent to the Landlord.
9. Currently, the suit property is occupied jointly by Rachael Wanjiru and Rahab Chege who run a supermarket business and Mpesa Shop respectively.
10. The Tenant/Applicant being apprehensive of the actions of the Landlord and the Agent, proceeded to file a complaint against the Landlord and his Agent in the Tribunal through a reference dated 29<sup>th</sup> February 2024 accusing the Landlord and the Agent of unlawfully evicting him from the suit premises contrary to the provisions of Cap 31 Laws of Kenya.
11. Tenant in their reference, prays that the Tribunal issues orders restraining the Respondent from forcefully evicting him from the suit property.
12. The Tenant/Applicant filed a Notice of Motion Application under certificate, together with his Supporting Affidavit dated 29<sup>th</sup> February 2024 seeking *Inter alia*;
  - I. That pending hearing and determination of this matter inter-parties, the honorable tribunal be pleased to order the Respondents to reinstate the tenant back to the premises and allow him to carry out his business as usual without any interferences.
  - II. That pending hearing and determination of the Application inter-parties, the Respondent by herself, her servant, employees and/or agents be restrained from illegally evicting, threatening, harassing the Applicant/Tenant or in any other manner interfering with the tenancy at the suit premises.
  - III. That pending hearing and determination of this matter the status quo be maintained and the tenant be allowed to carry out his business as usual.
  - IV. That pending the hearing and determination of this matter inter-parties, the Respondent be restrained from illegally increasing rent from Kshs. 12,000/= to Kshs. 18,000/=.
  - V. That the cost of the Application be provided for.
13. On the other hand, the Landlord filed a Notice of Preliminary Objection dated 14<sup>th</sup> March 2024 challenging the Tenant's Application on the ground that the Tribunal lacks the jurisdiction to entertain the complaint. In support of this ground, the Landlord states that there is no existence of a tenancy relationship between the parties since the tenant vacated the premises over 5 years ago.
14. I have considered the Tenants Notice of Motion Application, the Landlords Notice of Preliminary Objection together with the Replying Affidavit and the Subsequent submissions and wish to make a determination as hereunder.

#### **C. List of Issues for Determination**

15. Having given full consideration to the Preliminary Objection raised, the issue for determination is;
  - i. Whether this tribunal has jurisdiction to hear and determine the matter



## **D. Analysis And Findings**

16. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to first make a determination whether it is clothed with jurisdiction in the matter. In the case of Owners of the Motor Vessel 'Lillian" (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

17. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of *Pritam v Ratilal and Another* Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

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

18. The question therefore arising is whether there exists a tenancy relationship between the Applicant and the Respondent subject to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.

19. It is not in dispute that the Tenancy herein came to its end sometime in March 2019 when the Tenant herein sold his business to the third party and the said third party Juliana Waruguru started paying rent to the Landlord herein or his appointed agent. This is appropriately acknowledged by the ‘Agreement between George Mwaura Ngotho and Juliana Waruguru’ dated 25<sup>th</sup> March 2019, paragraph 7 of which states that rent is to be paid directly to the Landlord or as the Landlord directs.

20. It is now settled that the existence of the relationship of landlord and tenant is a pre-requisite, among others, for this Tribunal to be termed as having jurisdiction in any dispute relating to Tenancy. The fact that at the point of filing this suit the Tenancy relationship had long ceased to exist therefore means that the dispute, if any, has nothing to do with an existing Tenancy relationship which in turn ousts the Tribunal’s jurisdiction to hear and determine the dispute.

21. I therefore proceed to order as follows;

## **E. Orders**

- a. The Landlord’s Preliminary Objection is hereby upheld.
- b. The Applicant’s whole suit is hereby struck out.
- c. Costs are awarded to the Landlord assessed at Kshs. 20,000/=.
- d. File is marked as closed.

**HON P. KITUR**

**BUSINESS PREMISES RENT TRIBUNAL**



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 8<sup>TH</sup> DAY  
OF OCTOBER 2024**

In the presence of Ms. Daye for both Respondents and in the absence of the Tenant.

**HON P. KITUR**

**BUSINESS PREMISES RENT TRIBUNAL**



<https://new.kenyalaw.org/akn/ke/judgment/kebprt/2024/1867/eng@2024-10-08>