



**Juma v Shah (Tribunal Case E105 of 2024)  
[2024] KEBPRT 1869 (KLR) (Civ) (31 December 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1869 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E105 OF 2024  
P KITUR, MEMBER  
DECEMBER 31, 2024**

**BETWEEN**

**JUMA ALI MOHAMED JUMA ..... TENANT**

**AND**

**KANCHAN JAYENDRA RAICHAND SHAH ..... LANDLORD**

**RULING**

**A. Parties**

1. The Landlord is the registered owner of the property known as Plot Number 183 Mazeras Mugumo Basta (hereinafter referred to as the “suit premises”).
2. The firm of A. B Patel & Patel LLP represents the Landlord/Respondent.
3. The tenant operates a yard with the suit premises as a tenant of the landlord.
4. The firm of Bosire & Partners Advocates represents the Tenant/Applicant.

**B. The Dispute Background**

5. The parties herein enjoyed a tenancy relationship in which the tenant was granted possession of the suit premises in exchange of monthly rent in the sum of Kshs. 100,000/-.
6. The tenant moved this Honourable tribunal vide Complaint filed together with an Application both dated 4<sup>th</sup> April 2024 brought under certificate of urgency seeking inter alia the following orders:-
  - i. Spent



- ii. That a temporary injunction do issue restraining the respondent or its agents or servants from evicting or otherwise interfering with the tenants tenancy in the suit premises pending the hearing and determination of this application interpartes.
  - iii. That an injunction do issue restraining the respondent or its agents or servants from evicting or otherwise interfering with the tenants tenancy in the suit premises pending the hearing and determination of this complaint.
  - iv. The landlord pays the costs of the application.
7. Upon perusal of the Tenant's Application and Reference, the Honourable Tribunal, on 12<sup>th</sup> April, 2024, ordered the Landlord be restrained from evicting or otherwise interfering with the Tenant's tenancy in the suit premises.
8. In response to the Tenant's Application, the Landlord filed a Notice of Preliminary Objection dated 6<sup>th</sup> May 2024 on the ground that this Tribunal lacks jurisdiction to hear, investigate and determine any complaint in this matter as the tenancy of this premises does not fall within the purview of section 2(1) of the Landlord and Tenant (Shops, Hotels, Catering Establishments) Act Cap 301 on the basis that the premises is a yard and not a shop, hotel or catering establishment neither is it used wholly or mainly for the purpose of retail or wholesale trade or business or for rendering services for money or money's worth. The landlord sought to have the tenant's application and Complaint dismissed with costs.
9. The Honourable Tribunal, on 9<sup>th</sup> May, 2024, gave the following directions; that the Application dated 4<sup>th</sup> April 2024 and the Preliminary Objection dated 6<sup>th</sup> May 2024 shall be heard together, the Landlord to file a Replying Affidavit within twenty-one days, that each party file their written submissions within fourteen days respectively.
10. The Landlord filed its Replying Affidavit sworn on 2<sup>nd</sup> July 2024 by Jay Vinodkumar Patel in his capacity as the appointed attorney of the Landlord. The tenant, in response, filed a Further Affidavit sworn on 9<sup>th</sup> September 2024 by Juma Ali Mohamed Juma the Tenant herein.
11. The tenant filed its submissions dated 7<sup>th</sup> October 2024. Similarly, the Landlord filed its written submissions dated 16<sup>th</sup> October 2024.

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

12. Having given full consideration to the Application dated 12<sup>th</sup> April 2024 and the Preliminary Objection raised, the issues arising for determination are;
  - i. Whether this Tribunal has Jurisdiction to hear and determine the matter by dint of section 2 of the Landlord and Tenant (Hotels, Shops and Catering Establishments) Act ('the Act').
  - ii. Whether there exists a Landlord – Tenant relationship
  - iii. Whether the Tenants Reference and Application dated 4<sup>th</sup> April 2024 is merited?

### **D. Analysis and Findings**

#### **i. Whether this Tribunal has jurisdiction**

13. 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”.

14. The pertinent issue for determination is whether the suit premises, being a yard, qualifies as a “shop” under the provisions of the Act. This determination is crucial in establishing whether this Tribunal has the jurisdiction to adjudicate the present suit.
15. Generally, a “shop” is understood to be a place where goods are sold or services are provided to the public. According to the Act a “shop” means premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purpose of rendering services for money or money’s worth.
16. In the present case, discloses that the suit premises is a yard operating as a workshop where motor vehicle repair services are offered. The Tenant also states that he has an office within the same premises.
17. Question then arises as to whether the office and the yard being operated by the Tenant qualify as a shop within the meaning of Cap 301 and therefore within the jurisdiction of this Tribunal.
18. While on face value a yard appears to conflict the traditional definition of a shop, a keen reading of the definition under Section 2 of Cap 301 gives the definition a broader context. Akin to an office which is now settled as being within the jurisdiction of this Tribunal, a shop is further defined as a ‘premises... for the purpose of rendering services for money or money’s worth.’ I am therefore guided and agree with the Tenant’s submission that the business premise being a motor vehicle repair shop where services of repair are offered for money fits the description of a shop. As such, it is my finding that this Tribunal is clothed with the necessary jurisdiction to adjudicate the dispute.

## **ii. Whether there exists a Landlord - Tenant relationship between the parties under Cap 301;**

19. From the evidence by the parties, there appears to be a dispute as to whether exists a relationship between the parties with respect to the suit premises. While the Tenant acknowledges he is in the premises paying rent to the Landlord pursuant to terms contained in a Tenancy Agreement, the Landlord, in his evidence, gives two conflicting positions. First, the Landlord disputes any agreement signed between herself and the Tenant and states that she did not give any permission to the Tenant to occupy the premises. Secondly, she states that the Tenant ought to have paid a total of Kshs. 1,100,000/= having stayed in the premises for 11 months. These two positions cannot coexist. Additionally, failure by the parties to execute a Tenancy Agreement does not in itself suffice as proof of absence of a Tenancy.
20. A few definitions under Section 2 of the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301 (“the Act”) would be noteworthy:

“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 the 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;

"tenant" in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant;

"landlord", in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy;

"tenancy" means a tenancy created by a lease or underlease, by an agreement for a lease or underlease by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such;

- 19. The Tenant herein has also tendered evidence showing that he executed the Tenancy Agreement and has substantially complied with the terms therein especially on the amount of monthly rent paid, which to my mind is sufficient proof of the existence of a tenancy between the parties.
- 20. Having found that there exists a controlled tenancy between the parties, I will proceed to examine whether the Tenant is entitled to the reliefs sought.

## **ii. Whether the Tenant is entitled to the reliefs sought**

- 23. The Tenant's action to file the Complaint and Application was a direct result of the Landlord's verbal threat to evict him from the premises and demands for vacant possession without following laid down procedures.
- 24. The Act requires a landlord who wishes to terminate or alter the terms of a controlled tenancy to issue a notice in the prescribed form. Section 4 of the Act provides as follows;

Termination of, and alteration of terms and conditions in, controlled tenancy

- (2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.

- 23. A verbal notice clearly does not comply with the provisions of Cap 301. Any alteration of terms must comply with the provisions of Section 4 of the Act.



24. The Act further requires that there be a minimum notice period of two months before the notice takes effect. Section 4(4) provides thus:

No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein:

Provided that—

- (i) where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
- (ii) where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;
- (iii) the parties to the tenancy may agree in writing to any lesser period of notice.

26. In light of the foregoing, I therefore proceed to order as follows:

#### **E. orders**

- a. The upshot is that the Landlord's Preliminary Objection dated 6<sup>th</sup> May 2024 is dismissed and the Tenant's Application dated 4<sup>th</sup> April 2024 is hereby allowed in the following terms:
- b. The tenant shall remain in the premises and continue paying monthly rent as and when it falls due.
- c. The Landlord is at liberty to issue any notice she so wishes after the expiration of 12 months.
- d. Costs are awarded to the Tenant assessed at Kshs. 60,000/= deductible from monthly rent.
- e. The Complaint is marked as settled in the above terms.
- f. File is marked closed.

**HON P. KITUR - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 31<sup>ST</sup> DAY OF DECEMBER 2024.**

In the presence of Ms. Essajee for the Landlord and in the absence of the Tenant.

**HON P. KITUR - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

