



Mutongoi v Mwaniki (Tribunal Case E169 of 2024)
[2024] KEBPRT 1887 (KLR) (Civ) (1 October 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1887 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E169 OF 2024
M MAKORI, MEMBER
OCTOBER 1, 2024

BETWEEN

FIDELISE NZISA MUTONGOI APPLICANT

AND

CATHERINE MWANIKI RESPONDENT

RULING

1. The tenant filed a Reference dated the 5th of February 2024 and a Notice of Motion Application under Certificate of Urgency supported by an Affidavit of even date. She raises a complaint against the Landlord for breaking into the business premises and confiscating the Tenant's tools of trade contrary to CAP 301 of the Laws of Kenya.
2. In the Application, the tenant sought injunctive orders against the Landlord on the grounds That the Respondent broke into her business premises with the assistance of goons, confiscating her tools of trade and threatening the Applicant with eviction. Further she contends That the closure of tools of trade will cripple her business operations and That the Respondent has not issued a proper termination notice or a court order to the Applicant to vacate the business premises.
3. The Landlord responded with a Notice of intention to raise a Preliminary objection for the reasons That the suit filed is fatally defective in law and as such cannot stand or be ventilated before this honourable tribunal, That the tribunal lacks jurisdiction to hear and determine this matter and That the suit is an abuse of the process of this honourable court and ought to be dismissed with costs to the Respondent.
4. On the 7th of March 2024, this honourable tribunal ordered for an inspection report to be conducted, the same was conducted on 6th May 2024 and a report filed, the inspector's findings were That there were no operations going on at the premises, That another tenant by the name Judy Nzioki had



occupied the premises operating the same business under the name 'Corner bar' after the Applicant who was operating a bar named 'Monroki Officers', left the premises due to rent defaults and huge electricity bills. Further the Inspector noted That Ms Judy Nzioki was paying a rent of Kshs. 10,000 and stayed for three months only but left because of the existing case at the Tribunal.

5. The Tenant the swore a Supplementary Affidavit dated the 9th of May 2024 stating That she was never served with a notice from the tribunal and further insisted That she paid her monthly rent dutifully until the Landlord illegally locked the business premises on 8th May 2022. That the Landlady broke into the business premises on 1st June 2022 and carried away all her business tools of trade worth Kshs. 587,461/-to an unknown destination. She proceeds to attach copies of the receipts for the tools of trade stating That the said tools of trade are worth Kshs. 587,461/-.
6. On the 13th of May 2024, the matter came up for mention to confirm status and taking further directions, counsel for the Respondent informed court That when the tenant left, she left with her tools of trade. The tenant informed the tribunal That she was evicted in May 2022.
7. Relying on the report filed by the Investigator, the tribunal found That there cannot have been any tenancy relationship at the time of filing the Reference, being That it was filed in 2024. The Tenant's Reference and Notice of Motion Application was dismissed as the Preliminary Objection succeeded.
8. However, being aggrieved by the decision of the tribunal, the tenant filed another Application seeking the following orders; -
 - a. Spent.
 - b. That the Landlord is hereby ordered to return/release the Tenant's tools of trade immediately and unconditionally, failure to which the orders be enforced by O.C.S Kabati-Ndolos Police Station pending the hearing and determination of the case.
 - c. That this Honourable Court be pleased to stay any execution proceedings pending the hearing and determination of this application.
 - d. That this Honourable court be pleased to review, vary, set aside and or rescind the Ruling issued on 13th May 2024 and all the consequential orders and directions.
 - e. That the O.C.S Kabati-Ndolos Police Station to enforce the orders and do ensure peace prevails.
 - f. That the Honourable Court make further orders and issue other directions as it may deem just and expedient.
 - g. That costs of this application be provided for.
9. The Application is based on the grounds That the orders issued by this honourable tribunal on the 13th of May 2024 are a nullity and should be set aside, That the whole process leading to the acquisition of the orders was done in bad faith and extreme secrecy since the Applicant was not given a fair hearing before the Ruling was delivered. The tenant further claims That the Landlady depicts obvious malice and a clear intent to deny the tenant an opportunity to defend his case.
10. In response, the Landlord/Respondent filed a notice of intention to raise a preliminary objection on the basis That the suit filed is fatally and incurably defective in law and as such cannot stand or be ventilated before this honourable tribunal , That this honourable tribunal has no jurisdiction in the matter as per its Ruling dated 13th May 2024, That the court is functus officio as per its ruling dated 13th



May 2024 and That this is an abuse of the process of this Honourable court and ought to be dismissed with costs to the Respondent.

11. From the totality of the pleadings and documents by both parties, the following issues arise for determination; -
 - i. Whether this tribunal has jurisdiction to hear and determine this matter?
 - ii. Whether the Applicant/Tenant is entitled to the orders sought?
 - iii. Who bears the cost of this Application?
12. To arrive at a determination on this matter, I will first dispense with the first issue on whether this tribunal has jurisdiction to hear and determine this matter? This tribunal places reliance on the case of Republic v Chairperson, Business Premises Rent Tribunal at Nairobi & Another ex-parte Suraj Housing & Properties Limited & 2 others [2016] eKLR where the court cited with approval the decision in Pritam v Ratilal and Another [1972] EA 560 as follows: -

“ As stated in the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act itself, it is an Act of Parliament to make provision with respect premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this special legislation is to provide extra and special protection for tenants. A special class of tenants is created. 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”. (emphasis added).

13. This Honourable Tribunal has considered the Applicant's Application, as well as the arguments made by both parties. Upon review of the facts and the law, this Tribunal is compelled to make a determination on the issue of jurisdiction before delving into the substantive issues raised by the Applicant.
14. The jurisdiction of this Tribunal is established under the Landlord and Tenant (Shops, Hotels, and Catering Establishments) Act, Cap 301 of the Laws of Kenya, which empowers this Tribunal to hear disputes between landlords and tenants in controlled tenancies. The Applicant's claim pertains to a dispute with the Respondent regarding alleged tenancy matters.
15. However, based on the evidence presented and the findings of the Inspection Report, which this Tribunal relied upon when delivering its ruling on the 12th of April, 2024, it is clear That the Applicant was no longer a tenant of the Respondent at the time of filing the Reference. The inspection report indicated That the Applicant had vacated the premises and ceased to be a tenant before lodging the Reference.
16. It is an established principle That this Tribunal can only entertain disputes where there exists a Landlord- Tenant relationship at the time the claim is filed. Since the Applicant was not a tenant of the Respondent at the material time, this Honourable Tribunal lacks the requisite jurisdiction to hear and determine the matter.



17. Consequently, this Tribunal finds That the appropriate forum to hear and determine any further disputes or claims arising from the facts of this case would be the Magistrates Court, which has the jurisdiction to address civil disputes of this nature where no landlord-tenant relationship exists.
18. Given the foregoing, it is evident That the tribunal lacks jurisdiction to entertain this matter and therefore will not proceed with a determination on additional issues raised by the Applicant. The Tribunal places reliance on - Samuel Kamau Macharia v Kenya Commercial Bank Ltd [2012] eKLR where the Supreme Court stated the following;

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court 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.”

19. In the premises, I find That the Respondent’s Preliminary Objection dated 30th May 2024 succeeds and proceed to make the following orders; -
 - i. That the Applicant’s Notice of Motion Application Dated 14th May 2024 is dismissed for want of jurisdiction.
 - ii. That the interim orders issued on 14th May 2024 are hereby vacated.
 - iii. Each party shall bear its own costs.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually this 1st October, 2024 in the presence of Counsel for the Landlord/Respondent and in the absence of the Tenant/Applicant.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

