



Abuto v Bell Kenya Company Limited & another (Tribunal Case E1142 of 2023) [2023] KERRT 1184 (KLR) (7 November 2023) (Ruling)

Neutral citation: [2023] KERRT 1184 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E1142 OF 2023
HK KORIR, CHAIR
NOVEMBER 7, 2023**

BETWEEN

ROSELINE AWINO ABUTO TENANT

AND

BELL KENYA COMPANY LIMITED AGENT

AND

INTERCITY PROPERTIES LIMITED LANDLORD

RULING

1. By a notice of preliminary objection dated 24th August 2023, the Agent/2nd Respondent opposed the suit on the ground inter alia that the tribunal lacks the requisite jurisdiction to hear and determine this suit, since the tenancy does not fall within Section 2 of the [Rent Restriction Act](#) Cap 296 as the parties had agreed on a monthly rent of Kshs. 30,000 /=.
2. Directions were given to both parties for the P.O to be canvassed by way of written submissions, which the parties verily did. I shall proceed to consider the same.
3. Counsel for the Agent/2nd respondent filed a notice of preliminary objection dated 8th August,2023 on the following ground;
4.
 - a. The Honorable tribunal lacks the requisite pecuniary jurisdiction to hear and determine the suit , rent exceed Ksh.2,500 pursuant to the said provision
 - b. The jurisdiction of the tribunal to hear the rent dispute is provided under section 2(1) of [rent restriction act](#).



- c. That pursuant to the said provision of the Act, this tribunal only has jurisdiction to hear and determine disputes arising from dwelling houses which have a standard rent not exceeding kenya shillings two thousand five hundred (Ksh.2,500) per month, furnished or unfurnished:
- d. That this tribunal, lacking jurisdiction, should not entertain this matter and must consequently dismiss both the suit and the Application with cost to the 1st respondent.

Counsel for the Agent/2nd respondent relied on illustrious *locus classicus* case of *Mukisa Biscuit Manufacturing co.ltd v West End Distributors* where the court stated that a notice of preliminary objection consist of point of law which has been pleaded or raises by clear implication out of pleadings, and which if argued as a preliminary point may dispose the suit.

8. Counsel for the Plaintiff filed written submissions dated 21th August 2023 opposing the defendant's notice of preliminary objection. Counsel submitted that the 1st respondent preliminary objection submissions dated 15/08/2023 are misleading as they state that this Honorable tribunal is only seized of jurisdiction where the monthly rent payable by tenant is Ksh.2,500.00 the said property was not erected as of 1st January 1981 and/or the honorable tribunal is unable to determine the same, rent is to be assessed by the tribunal at a monthly rate of not less than one and one-quarter and not more than one and one-half percent of the cost of construction and the market value of the land, the landlord paying all outgoings.
9. The counsel submitted that the only way that one can establish the standard rent where the suit property is unknown to be let /or erected as of 1st January 1981 and an assessment has been carried out by the tribunal to determine the standard rent.
10. Counsel submitted that the agreed rent of Ksh.30,000 is not the standard rent but the monthly rent that was agreed upon, therefore the 1st Respondent should have made an application to have the same assessed by the tribunal to establish the standard rent where the suit property is unknown to have been let and/or erected as of 1st January 1981 and where an assessment has been carried out by the tribunal to determine the standard rent.
11. The counsel submitted that the applicant/tenant should have made the application for assessment of the standard to have tangible proof that the standard rent was more than one and one-half percent of the cost of construction and the market value of the land i.e the dwelling house.
12. The applicant Counsel states that there is no provision in the Rent Restriction Tribunal Act that bars the tribunal from hearing a dispute between a landlord and tenant. Therefore, the tribunal is lawfully seized in this matter.
13. Counsel relied on the case of *Republic v kenya revenue authority, commissioner Ex parte Keycorp Real advisory Limited*, Judge Mativo stated that: On principle it seems that in general a court is bound to entertain proceedings that fall within its jurisdiction. Put differently a court has no inherent jurisdiction to decline to entertain a matter within its jurisdiction. Jurisdiction is determined on the basis of pleadings and not the substantive merit of the case.



14. It is worth noting that in assessing the Jurisdiction of the Rent Restriction Tribunal, it must be noted that the Supreme Court in *Samuel Kamau Macharia & Another v KCB & 2 Others* opined that;

“A Court’s jurisdiction flows from either the constitution or legislation or both”. Further to the above, in *Desai v Warsama* [1967] EA 351, it was ruled that;

“No court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities.” The question of jurisdiction is therefore a threshold issue and must be determined at the threshold stage. In this regard, Section 2. (1) of the *Rent Restriction Act*.

15. The Supreme Court in its Advisory Opinion, *In the Matter of Advisory Opinion of the Supreme Court, Constitutional Application No. 2 of 2011*, restated the principle in the “*Motor Vessel “Lillian S case”*”, in the following terms –

The “Lillian S” case [1989] KLR, establishes that jurisdiction flows from law and the recipient court is to apply the same with any limitation embodied therein. Such a court may not arrogate to itself jurisdiction through craft of interpretation or by way of endeavor to discern or interpret the intention of Parliament where the wording of legislation is clear and there is no ambiguity.

17. Having carefully considered both parties’ pleadings as filed, the written submissions together with the authorities cited, the tribunal finds that it has no jurisdiction to hear and determine the matter by dint of Sec 2(1)(c) of *Cap 296*.

Accordingly, the P.O is upheld with no orders as to costs.

18. It, therefore, follows that the interim orders earlier granted have to be and are hereby discharged for want of jurisdiction.

19. Ruling delivered and issued in chambers in accordance with the Covid-19 practice rules this 7th day of November 2023 in the absence of both parties.

Certified copies to issue to parties accordingly.

SIGNED

HILLARY.K. KORIR

CHAIRMAN

RENT RESTRICTION TRIBUNAL

NAIROBI

