



REPUBLIC OF KENYA



**Mabiria & 5 others v Ojijo & 3 others (Tribunal Case E180 of 2021)
[2024] KERRT 303 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KERRT 303 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E180 OF 2021
HK KORIR, CHAIR
JANUARY 30, 2024**

BETWEEN

**MAUREEN MORAA MABIRIA 1ST PLAINTIFF
LIZA SHAKA SHUBAKA 2ND PLAINTIFF
JANE WACUKA GIKANDI 3RD PLAINTIFF
BEATRICE ODIYO 4TH PLAINTIFF
SILVA KHERU 5TH PLAINTIFF
RITTAH OKAL 6TH PLAINTIFF**

AND

**DAN OJIJO 1ST DEFENDANT
VILLA CARE MAN. LIMITED 2ND DEFENDANT
MAUREEN OJIJO 3RD DEFENDANT
SIGIMO ENTERPRISES 4TH DEFENDANT**

RULING

1. By a notice of preliminary objection dated 31st July 2023, the Defendant 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.
2. The Plaintiff/Applicant filed a notice of withdrawal of preliminary objection dated 4th August 2023.
3. Directions were given to both parties for the P.o to be canvassed by way of written submissions, which the parties did. I shall proceed to consider the same.



4. The Defendants through their submissions states that the applicants are not tenants but home owners, the plaintiff herein leased the sectional property for 99 years at a cost of Ksh. 6,950,000/= therefore there is no Landlord/Tenant relationship, they are in arrears of substantial amount of money which is in terms of service charges amounting to Ksh. 2,500,000/=.
5. The plaintiff herein opposing the preliminary objection alleges there are residential premises and commercial premises and as such the suit was filed in a proper court, with jurisdiction to determine the matter.
6. Section 2 of cap 296, gives the tribunal jurisdiction to determine disputes. It states that: -
 2. Application
 - (1) This Act shall apply to all dwelling-houses, other than—
 - a) excepted dwelling-houses;
 - b) dwelling-house let on service tenancies;
 - c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.”
7. A court jurisdiction flows from either *the constitution* or legislation or both, further no court can confer jurisdiction upon itself, the plaintiffs bought the houses through mortgages which is a commercial transaction, where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and determination are nullities.

Accordingly, the P.o is upheld with no orders as to costs.
8. It, therefore, follows that the interim orders earlier granted have to be and are hereby discharged for want of Jurisdiction.

RULING DELIVERED THIS 30TH DAY OF JANUARY 2024 IN OPEN COURT.

CERTIFIED COPIES TO ISSUE TO PARTIES ACCORDINGLY.

SIGNED

H.K KORIR

CHAIRPERSON

RENT RESTRICTION TRIBUNAL

NAIROBI

