



**Wamaitha v Shelter Investment Limited (Tribunal Case
E1047 of 2023) [2024] KERRT 309 (KLR) (23 January 2024) (Ruling)**

Neutral citation: [2024] KERRT 309 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E1047 OF 2023
JK IKINGI, VICE CHAIR
JANUARY 23, 2024**

BETWEEN

ROSEMARY WAMAITHA PLAINTIFF

AND

SHELTER INVESTMENT LIMITED RESPONDENT

RULING

1. By a notice of preliminary objection dated 8th August 2023, the Defendants opposed the suit on the grounds *inter alia* that the Applicant lacks locus standi to present the suit and that the Tribunal lacks the requisite jurisdiction to handle this matter.
2. On 16/02/2023 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 Applicant filed written submissions dated 16th November 2023 where he stated that the tenant stated that she was issued with a termination notice dated 4-7-2023 and the respondent in response filed a tenancy agreement dated 5-9-2015 between the Respondent's company and one David Mwangi Mihango for shop No. F.13 therefore confirming that the premises are commercial hence this tribunal lacks jurisdiction.
4. Counsel stated that the notice to vacate attached by the Applicant was allegedly directed upon Mwangi Mihango and not the Applicant. The said Mwangi Mihango is not a party to the proceedings hence the tribunal lacks jurisdiction to issue orders to a party who is not in the court proceedings.
5. Counsel stated that the Applicant has not filed any material to show her relationship with the respondent hence she lacks the capacity to sue the Respondent. Counsel further stated that the orders sought cannot be implemented as they are vague and lack description of the subject matter. Counsel relied on the case of Quick Enterprises Ltd v Kenya Railways Corporation Kisumu High Court Civil Case No.22 of 2019 where it was held that: "When preliminary points are raised, they should be capable



of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

6. Counsel stated that the P.O as raised has merit and the Tribunal should find so and grant the orders sought.
7. The Respondent/Plaintiff filed her written submissions dated 24th November 2023 where she stated that she was served with a 27 days’ notice to vacate by the applicant dated 4th July 2023 requiring her to vacate by 31st July 2023. She stated that the notice was prompted by an attempted sexual assault by the caretaker and therefore it was not based on good reasons.
8. The Respondent stated that David Mwangi Mihango is her husband and that at the time the notice was served he was out of the country hence he could not commence these proceedings. She questioned why the Applicant served her with the notice if at she was a stranger to them. She stated that the Holy Book appreciates that the two are one.
9. The Respondent stated that the Tribunal should consider the best interest of the school going children if the tribunal finds that they should vacate and also be accorded ample time to source for another house and school.
10. The Respondent stated that the suit premises are a residential house and she requested that the tribunal’s inspector be sent to make a finding and report to the tribunal. The Respondent stated that she has been paying rent faithfully and has no arrears and that if the lease has expired there is a chance of renewing.
11. The Respondent submitted that she has proved her case and requested the Tribunal to dismiss the Preliminary Objection with costs.
12. I have considered the grounds set out in the Notice of Preliminary Objection, the parties’ respective submissions, the relevant legal frameworks, and the prevailing jurisprudence on the key questions falling for determination by this tribunal. I find that the issues for determination are:
 - a. Whether the Plaintiff had the Locus Standi to institute the present suit; and
 - b. Whether the Tribunal has jurisdiction to determine the suit.

Whether the Plaintiff had the Locus Standi to institute the present suit

13. A preliminary objection was defined in the case of *Mukisa Biscuits Manufacturing Ltd. v West End Distributors Ltd. Civil Appeal No. 9 of 1969 (1969) EA 696* where the Court held that:

“A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

Further *Sir Charles Nebbold, JA* stated that:-

“A preliminary objection is in the nature of what used to be called demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained or of what is sought is the exercise of judicial discretion.”



Also in the case of *Oraro v Mbaja* [2005] 1 KLR 141 the court held as follows:

“...A “preliminary objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point....Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence....” (Emphasis added).

14. The above being the description of a Preliminary Objection, it is not in doubt that a Preliminary Objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion.
15. The case of Law Society of Kenya Vs Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, defined *Locus Standi* as follows:-

“*Locus Standi* signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”.
16. Further in the case of Alfred Njau and Others -Vs- City Council of Nairobi [1982] KAR 229, the Court also held that:-

“The term *Locus Standi* means a right to appear in Court and conversely to say that a person has no *Locus Standi* means that he has no right to appear or be heard in such and such proceedings”.
17. Therefore, *locus standi* means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. *Locus standi* is so important that in its absence, party has no basis to claim anything before the Court.
18. Before the Tribunal embarks on determining the merit of the Notice of Preliminary Objection, it will first determine whether what have been raised by the parties herein satisfy the ingredients of a Preliminary Objection. In this determination, the Tribunal will be persuaded by the findings in the case of *Oraro Vs Mbaja*(2005) 1KLR 141 above mentioned.
19. The defendant avers that the plaintiff lacks *locus standi* to institute the suit. The thrust of their argument is that the Plaintiff is a stranger to the Respondent and hence she lacks *locus*. The Respondent stated that they entered into a tenancy agreement with one David Mwangi Mihango and not the Plaintiff herein. In response the Plaintiff stated that she is the spouse to David Mwangi Mihango therefore competent to file the suit. I have perused the file and looked at the Tenancy Agreement on record however the said agreement is completely illegible and I could not ascertain as to who executed it. I find that the issues brought up by both parties can only be proved by way of adducing evidence. There will be need for evidence to be tendered to disapprove the assertions made by the Plaintiff herein.



20. Additionally, the Tribunal is guided by the provisions of Order 1 Rule 9 of the [Civil Procedure Rules](#) which provides that;

“Rule 9. No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Rule 10. (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

21. The Court of Appeal in [William Kiprono Towett & 1597 Others Vs Farmland Aviation Ltd & 2 Others \(2016\) Eklr](#) Held That:

“...Most critically Order 1 Rule 9 of the Civil Procedure Rules (2010) makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit. We reproduce the same hereunder: No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”

22. Further in the case of Republic Vs. District Land Registrar, Uasin Gishu & Anor (2014) eKLR Justice Ochieng held that:

“...to my mind, Justice is not dependent on Rules of Technical procedures. Justice is about doing the right thing. Pursuant to article 159 (2) (d)in exercising Judicial Authority, the courts ' in exercising judicial authority, the courts and tribunals shall be guided by the following principles(d) justice shall be administered without undue regard to procedural technicalities.”

23. On the issue of whether the premises are residential or commercial, it can only be ascertained through inspection by the rent inspector and filing of a report afterwards.

24. Consequently having found that the P.O does not meet the required legal threshold the Tribunal finds that it has the Jurisdiction to determine this matter.

25. Having carefully considered both parties' pleadings as filed, the written submissions together with the authorities cited, the tribunal finds that:

1. The Preliminary Objection lacks merit and it is therefore dismissed with costs.



2. The Rent Inspector to visit the Suit Premises and verify on the issue of use and occupation of the premises.
3. Status quo to be maintained.

It is so ordered.

RULING DELIVERED IN CHAMBERS IN THE ABSENCE OF BOTH PARTIES IN ACCORDANCE WITH THE COVID-19 PROTOCOLS THIS 23RD DAY OF FEBRUARY 2024.

Certified copies to issue to parties accordingly.

SIGNED

JANICE K. IKINGI - DEPUTY CHAIRMAN

RENT RESTRICTION TRIBUNAL

NAIROBI

