



REPUBLIC OF KENYA



**KENYA LAW**  
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**Adatia v Thakkar & another (Environment & Land Case 87 of 2022)  
[2022] KEELC 15178 (KLR) (6 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15178 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 87 OF 2022**

**NA MATHEKA, J  
DECEMBER 6, 2022**

**BETWEEN**

**NARESH KUMAR BALUBHAI ADATIA ..... PLAINTIFF**

**AND**

**SAMIR THAKKAR ..... 1<sup>ST</sup> DEFENDANT**

**BENARD GICHUKI MWANGI T/A SURE AUCTIONEERS .... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The defendants notice of preliminary objection is dated September 19, 2022 states that the plaintiff's suit and application dated August 12, 2022 are in contravention of section 2 and 12 of the *Landlord and Tenant (Shops, Hotels and Catering Establishment)*.
2. The plaintiff's case is that he is a tenant on Plot No. 64 Section XXX, owned by Gopalji Vaghji Thakker and Narmada Gopalji Thakker. The annual rent is Kshs 13, 920 and claims to have paid Kshs 41,760/= for the year 2020, 2021 and 2022 on February 9, 2022 to N.A Ali & Company advocates. On March 7, 2022, the 1<sup>st</sup> defendant issued him with a Notice to Terminate or Alter Terms of Tenancy to increase the monthly rent from Kshs 1,160/= to Kshs 43,600/=. The plaintiff responded to the letter on March 30, 2022 indicating he would not pay the rent as proposed and suggested Kshs 8,000/= as per section 10 of the Act. On June 20, 2022 the 1<sup>st</sup> defendant wrote to the plaintiff demanding outstanding rent from June 2022 to December 2022 at Kshs 42,440 per month, which the Plaintiff responded to stating that the Tenancy Notice dated March 7, 2022 cannot take effect based on section 10 of Act. The defendant then proceeded to issue the plaintiff with a Proclamation of Distraint of Movable Property on August 8, 2022, distressing for rent amounting to Kshs 155,052/=.



3. A preliminary objection must be on a pure point of law which must be pleaded or arises by clear implications from the pleadings, as it was stipulated in *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd* (1969)EA 696, where it was held as follows:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
4. Section 2 (1) of the [Landlord and Tenant \(Shops, hotels and catering establishments\) Act](#) provides that;

“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;
5. The tenancy between the parties is a controlled tenancy and the jurisdiction lies with the Business Premises Rent Tribunal which is established under the Act. Under section 12 of the tribunal has jurisdiction to inter alia;
  - a. to determine whether or not any tenancy is a controlled tenancy;
  - b. to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
  - c. to permit the levy of distress for rent;
6. The plaintiff has submitted that there is no tenancy relationship between himself and the 1<sup>st</sup> defendant and stated that his Landlords are Gopalji Vaghji Thakker and Narmada Gopalji Thakker the owners of the suit property on which the rental premises stand. From the reading of section 12 as read with section 2 of the Act, the plaintiff has a grievance relating to a controlled tenancy, he ought to lodge the same with the tribunal which has original jurisdiction as the first stop where tenancy is controlled. This court under section 12 (2) (a) of the *ELC Act* has jurisdiction to handle matters relating to rent, the jurisdiction is appellate under section 15 (1) of the Act, where appeals from the tribunal are heard and determined by this court.
7. The upshot of this ruling is that the Notice of preliminary objection dated September 19, 2022 is upheld and I strike out the suit with costs to the Defendants.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 6<sup>TH</sup> DAY OF DECEMBER 2022.**



**N.A. MATHEKA**  
**JUDGE**

