



### **Editorial Note**

Landlord & Tenant

- Jurisdiction of Business Tribunal defined
- Powers of the Tribunal explained and confined to those set out in the Act
- Origin of the jurisdiction of the High Court is the Constitution and other laws
- The Court of Appeal and other courts jurisdiction conferred by specific acts
- S 3 of the Judicature Act does not confer jurisdiction on the 3 layers of the courts but only the mode of exercise of jurisdiction
- Appellate Jurisdiction Act cap 5 referred to as establishing the jurisdiction of the Court of Appeal
- Business Tribunal has no power to grant injunctive relief or damages
- **Relevant case law considered**

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
HCCC 400 OF 2004**

**TRANS-AXIS SECURITY LIMITED ..... PLAINTIFF**

**VERSUS**

**DHIRAJLAL VIRPAL PATANI ..... 1ST DEFENDANT**

**GARDEN CHAMBERS LIMITED ..... 2ND DEFENDANT**

**E M KING'ARA**

**T/A STARLINE AUCTIONEERS ..... 3RD DEFENDANT**

**RULING**

The application dated 21st April 2004 seeks injunctive relief in respect of goods attached pursuant to levy of distress for rent in respect of controlled premises.

A notice of preliminary objection dated 30th April 2004 was filed on behalf of the second and third defendants and this court was requested to hear the preliminary objection on 3rd May 2004.

The defendant contended that under S 16 the Minister has sole responsibility to make regulations for the better carrying out of the provision of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act Cap 301 and he has not conferred any jurisdiction on the High Court to deal with the matter sought to be dealt with in the application namely injunctive relief. It is contended that it is the Minister who appoints magistrates in some areas to deal with matters falling within the Landlords Tenants Act.

It is further contended that the High Court has jurisdiction to handle appeals from the Business Tribunal and therefore the High Court ought not to assume both original jurisdiction and appellate

jurisdiction in matters related to business premises and S 15 was cited in support. It was emphasized that under S 15(4) the decision of the High Court shall be final.

The respondents counsel added that it would be irregular for the High Court to have both original and appellate jurisdiction on the same issue. He added that the fact that the Business tribunal may not be sitting does not confer jurisdiction on the High Court in a matter on which it has no jurisdiction. There is no power in the High Court to exercise concurrent jurisdiction with the subordinate courts and tribunals.

The power to grant injunction or any other interim relief is conferred on the magistrate's court pending the hearing of a reference to the Business Tribunal. The learned counsel capped his argument by citing S 3 of the Judicature Act where the High Court is statutorily required to exercise its jurisdiction in conformity with the Constitution and written laws. The Landlord and Tenant Act is one of such written laws and the High Court must recognize that its jurisdiction is restricted by the Act.

Section 3 of the Civil Procedure Act provides:-

**“In the absence of any specific provision to the contrary nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred or any special form or procedure prescribed, by or under any other law for the time being in force”**

He cited this section to reinforce, that the Landlord and Tenant Act does not confer jurisdiction on the High Court to assume jurisdiction on illegal distress for rent, injunction and award of damages. The Tribunal has power to award compensation although it does not have power to award damages. It is only in execution that the High Court has jurisdiction.

Mr Ombete the learned counsel for the applicant replied by submitting that the Business Tribunal has jurisdiction in only those matters that are specifically set out in the Act and the schedules to the Act and anything outside the Act and the schedule is within the jurisdiction of the High Court.

He argued that the Business Tribunal has no power to award damages or to grant injunctions. The tribunal has power to give orders on eviction or increase of rent or any other complaint but the subject matter of the application is outside its purview as per the provisions of the Act. The attempted eviction by the landlord and illegal levy of distress are matters in which the High Court has jurisdiction due to illegality. Similarly damages have been claimed which are likely to be over and above the subordinate courts jurisdiction ie over and above 3 million (Kshs).

In answer to the points raised I consider it important to clarify the point concerning the jurisdiction of other courts other than the High Court. This is provided for by section 65(1) of the Constitution in these terms:

**“Parliament may establish courts subordinate to the High Court and courts martial, and a court so established shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by any law”**

Moving on from this point in so far as the jurisdiction of the Business Tribunal is concerned the law which confers jurisdiction on the Tribunal is the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301. Indeed the powers of the business Tribunal are set out in S 12 of the Act. I do not accept the respondents counsels argument that the jurisdiction is conferred by S 3 of the Judicature Act cap8 on any of the courts mentioned therein. What S 3 of the Judicature Act provides is the mode of exercise of jurisdiction. In the case of the High Court its jurisdiction is conferred by S 60(1) of the Constitution which reads:-

**“There shall be a High Court, which shall have unlimited Original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.”**

In the case of the Court of Appeal its establishment is provided for under section 64(1) in these words:-

**“There shall be a Court of Appeal which shall be a superior court of record, and which shall have such jurisdiction and powers in relation to appeals from the High Court as may be conferred on it by law.”**

The jurisdiction of the Court of Appeal is conferred by the Appellate Jurisdiction Act cap 9 of the Laws of Kenya and in particular S 3 thereof.

Having dealt with the issue of jurisdiction of the courts generally I now wish to turn to the Business Tribunal. As mentioned above its jurisdiction is conferred by S 12 of the Landlord and Tenant Act. S 12 does not cover the power to give injunctions or award damages apart from compensation for misrepresentation or set out in S 13. Similarly the Tribunal does have power to permit the levy of distress for rent as per sub-section (h) of S12 but when an injunction is sought due to alleged illegality of distress, that falls outside S 12 of the Act. Injunctive relief as a whole is clearly outside the ambit of S 12 of the Act.

On the other hand the power to grant injunctive relief clearly falls under the High Court as per S 60 of the Constitution as explained above and also S 63 of the Civil Procedure Act. To answer the point concerning the High Court exercising its original and appellate jurisdiction on the same issue the objection cannot be understood because an aggrieved party does have a right of appeal to the Court of Appeal where injunctive relief is granted or refused.

It is therefore as clear as the light of day, that the application for injunctive before for the High Court is properly brought in view of the legal position as expounded above.

However to reinforce the courts finding its encouraging to note that in holding as above this court is not brazing the trial so to speak and other courts have had occasions to consider the points raised herein in the past for example, in the case of **NALSHIDAS v NYALI AIR CONDITIONING CA 205 of 1995** unreported. The Court of Appeal held that only the High Court has jurisdiction to restrain unlawful eviction and the Business Tribunal did not have any such jurisdiction. From the facts of the case before me the two cases appear to be on all fours.

The second illustration is provided by the case of **MUNDIA v LOLCHOKI HCCC NRB 857 OF 1995** unreported where a notice to quit was declared void under cap 301 and the Tenant was subsequently evicted. Hancox J as he then was held that the subsequent action for damages for breach of contract was properly brought in the High Court.

On the strength of the above exposition of law on jurisdiction, the preliminary point is not properly grounded in law and the same is dismissed with costs to the applicant.

It is so ordered.

DATED and delivered at Nairobi this 14th day of May 2004.

**J G NYAMU**

**JUDGE**