



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**ENVIRONMENT AND LAND COURT**

**ELC. CASE NO. 578 OF 2014**

**A-ONE AUTO SERVICES LIMITED.....PLAINTIFF/ APPLICANT**

**VERSUS**

**JAYANTILAL O. KANTARIA.....DEFENDANT/RESPONDENT**

**RULING**

I have been requested by Counsels for the parties to deliver a ruling as to whether or not this matter should be transferred to the Business Premises Rent Tribunal.

I have perused the file and the pleadings filed therein. It is evident that there is a garage business being carried out within the compound of the suit premises being L.R No. 209/7/3 situate at 3<sup>rd</sup> Parklands Avenue, Nairobi. This business is being carried out by the Plaintiff. On the other hand, the proprietor of the said business, Minesh Jagdish Rathod, also occupies Flat No. 2 within the suit premises. The dispute herein relates to the garage business being carried out within the compound of the suit premises by the Plaintiff. It is alleged that the Defendant has served notice to vacate to the Plaintiff which the Plaintiff is disputing.

The said garage business falls within the definition a “shop” within the meaning of the Landlord and Tenant (**Shops, Hotels and Catering Establishments**) Act Cap 301 which gives the following definition at **section 2(1)**:

**“shop” means premises occupied wholly or mainly for purposes of a retail or wholesale trade or business for the purpose of rendering services for money or money’s worth.”**

There is no question that the Plaintiff’s business on the suit premises comprises of a business for the purpose of rendering services for money or money’s worth.

In addition to the above, there is no evidence that the Plaintiff entered into a tenancy agreement with the Defendant to carry out a garage business within the compound of the suit premises. This leads to my finding that what exists is a controlled tenancy. **Section 2(1)** of the **Landlord and Tenant (Shops, Hotels and Catering Establishments) Act** defines a controlled tenancy as follows:

**“controlled tenancy” means a tenancy of a shop, hotel or catering establishment (a) which has not been reduced in writing ...”**

Disputes arising from controlled tenancies are to be referred to the Business Premises Rent Tribunal under the provisions of **section 6 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act**.

I note that the Plaintiff had already filed a reference to the BPRT under BPRT No. 257 of 2014 and only

came to this court because the Chairman of that Tribunal had not commenced any sittings. I am informed that the said Chairman is now sitting. I therefore direct that this matter be transferred to the Business Premises Tribunal for hearing and determination.

**DELIVERED AND DATED AT NAIROBI THIS 20<sup>TH</sup>**

**DAY OF FEBRUARY 2015.**

**MARY M. GITUMBI**

**JUDGE**