



**Shiloah Investment Limited v East Africa Institute of Certified Studies Limited
(Civil Case E005 of 2021) [2023] KEHC 164 (KLR) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E005 OF 2021
RE ABURILI, J
JANUARY 23, 2023**

BETWEEN

SHILOAH INVESTMENT LIMITED PLAINTIFF

AND

EAST AFRICA INSTITUTE OF CERTIFIED STUDIES LIMITED . DEFENDANT

RULING

1. This matter was filed on April 23, 2021 by the plaintiff Shiloah Investments Limited against East Africa Institute of Certified Studies Limited.
2. In the plaint dated April 19, 2021, the plaintiff's claim against the defendant is for special damages in the sum of Kshs 3,819,227/= being rent for the space on the 10th floor at Mega Plaza 2 measuring 6750 square feet, auctioneers costs of Kshs 522,238/= for distressing for rent arrears and Kshs 36,342,348/= plus VAT being rental payment/mesne profits for the remainder of the lease period of the lease; interest on the special damages, pleaded above; clearance of the defendant's utility bills as per the meter readings as at January 2021, reinstatement of the demised premises to the state it was in at the commencement of the lease, tear and wear only being excepted as per the lease agreement and in default, reimburse the plaintiff the costs thereof; costs of the suit and any other reliefs the court may deem fit to grant.
3. The claim by the plaintiff is predicated on the facts that the defendant was its tenant *vide* the lease agreement from May 1, 2019 to April 30, 2025 at an agreed monthly rent and other conditions attached thereto but that the defendant defaulted to the tune of Kshs 3,819,227/= and the plaintiff engaged auctioneers to proclaim the defendant's goods at a cost and sold the said goods at a paltry Kshs 46,000/= only.
4. The plaintiff accuses the defendant of breach of the terms and conditions of the lease and claims for loss and damage suffered.



5. The defendant filed amended defence on July 15, 2022 denying the plaintiff's claim and contending that owing to the effects of covid-19, it could not operate hence it terminated the lease under section 65 of the [Land Act](#) and was fully discharged from the lease, among other contentions and maintains that after it was discharged from the lease as it could no longer use the premises. the plaintiff obtained a new tenant into the new premises and for which it receives rent hence the plaintiff had fully mitigated the loss.
6. When the matter came up before me, I asked the parties to indicate whether this was a matter within the jurisdiction of Environment and Land Court or High Court, although the defendant did not, in its defence, raise the issue of jurisdiction.
7. This was after parties had complied with directions issued on July 14, 2022 by Justice F.A Ochieng and pleadings had now closed.
8. Dr Chokaa counsel for the defendant is of the view that the claim falls under the jurisdiction of the Environment and Land Court while Mr Que counsel for the plaintiff asserts that its claim is for breach of contract and rental income arrears unpaid plus mesne profits hence it falls within the jurisdiction of the High Court and not the Environment and Land Court.
9. Counsel for the plaintiff cited [Cooperative Bank of Kenya Limited v Patrick K. Njuguna & others](#) [2017]eKLR and submitted that the tenancy having terminated and the tenant having vacated the premises, the claim cannot fall under the jurisdiction of Environment and Land Court.
10. I have considered the arguments by both counsel. I observe that it was this court's own inquiry on its jurisdiction in the claim that invited the parties' counsel to submit for clarity purposes so that the court does not engage into a full hearing in vain.
11. This is because jurisdiction is everything without which a court of law acts in vain and once a court of law finds that it has no jurisdiction in a matter, it can do nothing else and must down its tools (see [Owners of Motor Vessel Lilian S v Caltex Oil Kenya Ltd](#) [1989] KLR).
12. I have perused the Court of Appeal decision in the cited [Cooperative Bank of Kenya Limited v Patrick K. Njuguna](#) (supra) case. At paragraph 41, the Court of Appeal stated inter alia:

“Furthermore, the jurisdiction of the Environment and Land Court to deal with disputes relating to contracts under section 13 of the [Environment and Land Court Act](#) ought to be understood within the context of the court's jurisdiction to deal with disputes connected to ‘use’ of land as discussed herein above. Such contracts, in our view, ought to be incidental to the ‘use’ of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.....

For the above reasons, the appellant's objection on jurisdiction was rightly dismissed.”
13. The claim herein arises from a tenancy contractual relationship which, from the pleadings of both parties and especially the defendant, determined. That being the case, I am satisfied that the claim is of a civil nature for compensation arising from alleged breach of terms and conditions of the tenancy agreement, the unpaid rents and or subsequent consequential loss.
14. I therefore find and hold that this court has jurisdiction to hear and determine this dispute. I so hold and proceed to direct that pretrial conference shall be held forthwith and directions on the disposal of the suit be given forthwith.
15. I so hold.



Dated, signed and Delivered at Kisumu this 23rd Day of January, 2023

R.E. ABURILI

JUDGE

Note: the ruling herein was to be delivered on 24th January, 2023. However, the defendant's counsel appeared in court on 23rd January 2023 under mistaken belief that the ruling was to be delivered on that day. The court requested him to contact counsel for the plaintiff which he did and upon the court satisfying itself that both parties' counsel were present, as per the recorded court proceedings, the ruling was delivered in their presence as it was ready and none of them had any issues with the fast tracked ruling.

Dated, signed and Delivered at Kisumu this 23rd Day of January, 2023

R.E. ABURILI

JUDGE

Page 2 of 2

