



**Namo Hardware Ltd v Cherangani Investment Co Ltd; Amar Hardware & Electricals (Interested Party) (Environment & Land Case E036 of 2021) [2025] KEELC 4469 (KLR) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4469 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E036 OF 2021**

**CK NZILI, J  
JUNE 11, 2025**

**BETWEEN**

**NAMO HARDWARE LTD ..... PLAINTIFF**

**AND**

**CHERANGANI INVESTMENT CO LTD ..... DEFENDANT**

**AND**

**AMAR HARDWARE & ELECTRICALS ..... INTERESTED PARTY**

**JUDGMENT**

1. The plaintiff approached this court through an amended plaint dated 10/5/2024. It seeks:
  - a. Mandatory and permanent injunctions restraining the defendant, its agents, servants or employees from or anyone claiming through it from interfering with its quiet, and peaceful possession of business premises on title number Kitale Municipality.LR.2XX6/X9/V.
  - b. Damages for trespass, loss of business and anticipated profit in the sum of Kshs. 25,000/= per day for 35 days.
- (C) Special damages of Kshs. 347,417/=.
2. The plaintiff avers that at all times, was a tenant on the defendant's Kitale Municipality Title No. 2XX6/X9/V, operating a hardware business, dealing in assorted goods, such as cement and paints, which are perishable in nature, paying a monthly rent of Kshs.126,730/= including VAT, while the interested party was the immediate former tenant. The plaintiff avers that the defendant received rent from it for more than 2 years by cheques drawn in the defendant's name on its Account No. 100604411 5909 Oriental Bank Kitale, while aware it was operating its business in the name of Namu Hardware



Ltd, as printed and conspicuously displaced on the walls of the said premises, and recognized it as a lawful tenant, operating as such.

3. The plaintiff avers that while aware of the foregoing facts and without challenging or questioning the validity of the said tenancy, the defendant on 4/7/2021 without a court order, any notice or valid reasons, went to the suit premises, padlocked all the doors of the shop with extra padlocks, welded the steel doors to completely prevent access to the premises and stationed security guards at the entry to keep the plaintiff's workers and customers at bay. As a result of the defendant's action, the plaintiff avers that it suffered loss in terms of salaries and security charges from 4/7/2021 to 7/8/2021 at Kshs. 278,000/= and Kshs. 6,941/=, respectively.
4. The defendant opposes the suit through a further amended defence and counterclaim dated 4/6/2024. It denied that the plaintiff was its tenant on premises standing on LR No. 2XX6/X9/V now converted into Kitale Municipality Block 4/494, since the tenant, up to 30/6/2021 was Amar Hardware & Electronics through which, vide ELC No. 95 of 2016, it had sought for a declaration that the tenancy had terminated with effect from 1/4/2016 and for vacant possession in default, an eviction order to issue and which suit was compromised by the parties and a lease agreement signed for five years that expired on 30/6/2021. The defendant avers that in the said tenancy agreement the interested party was agreeable to clear in installment, the outstanding rent of Kshs. 4,165,560/=, and not to sublet the premises or give possession to any other party.
5. Equally, the defendant avers that upon expiry of the lease, the tenant did not seek any extension of the lease or hand over vacant possession, hence on 4/7/2021, it locked the premises and vide a letter dated 7/7/2021, it called upon the tenant to come to the premises which were opened for purposes of removing its merchandize and give vacant possession to the defendant, but the notice was not adhered to. The defendant denies having been paid rent dues by the plaintiff or issuing a receipt for rent to the plaintiff for any rent received as any cheques issued to pay rent were from the interested party to whom the suit premises had been leased to, otherwise the plaintiff was a stranger to it, who had no tenancy relationship with them. By way of counterclaim, the defendant avers that the plaintiff was never its tenant, it should vacate the premises in default, be evicted and ordered to pay mesne profits at Kshs. 126,731/= per month with effect from 1/7/2021 and the outstanding sum of Kshs. 506,920/=.
6. According to the defendant, the plaintiff and the interested party are companies with the same directors, with the plaintiff registered on 13/5/2019 during the pendency of the previous suit. The defendant admits that though during the subsistence of the tenancy between it and the interested party, cheques for rent could be issued in the name of the plaintiff, that by itself could not have made the plaintiff a tenant, hence the doctrine of estoppel does not apply.
7. The defendant avers that the plaintiff has no privity of contract with it, and as such was a trespasser on the suit premises who does not deserve the reliefs sought. The defendant counterclaims for:
  - a. Declaration that the plaintiff is not and has never been a tenant of the defendant.
  - b. Mesne profits of Kshs. 506,920/= together with accrued amount of Kshs. 126,730/= per month till payment in full.
8. The interested party after entering appearance on 27/7/2023, only filed a list of witness statements and documents dated X9/8/2023.
9. By a reply to defence and defence to the counterclaim dated 12/5/2023, the plaintiff stated that it was a lawful tenant of the defendant on month to month basis, paying monthly rent of Kshs. 126,730/=, to the defendant which payments were upto date as July 2021, hence denies the alleged debt of Kshs. 506,920/=. The plaintiff avers that it paid Kshs. 1,267,200/= for August 2022 and January 2023,



to the defendant, hence there is need to take accounts to confirm indebtedness, if any, otherwise the counterclaim lacks both legal basis and merits.

10. At the trial, Ronak Premchand Shah, testified as PW1. He relied on a witness statement dated 8/7/2021 and 10/5/2024 as his evidence-in-chief. PW1 told the court that he was a director of the plaintiff, dealing with assorted hardware goods at the time of the incident valued at approximate Kshs.15,000,000/=. PW1 said that the business was situated in L.R No. Kitale Municipality Block 2XX6/X9/V, owned by the defendant, paying monthly rent of Kshs. 126,730/=. inclusive of VAT. PW1 told the court that on 4/7/2021, the defendant without notice or reason, went to the shop, padlocked the same with extra padlocks, welded the steel doors, and deployed several security guards, hence completely denying the company staff and its customers access thereof. He termed the acts as unlawful and illegal for they were not sanctioned by any court order.
11. PW1 stated that the stock in trade had been obtained through loan facilities from local banks and in default to pay the loan facility after the business was closed. PW1 said that some of the stocks were fragile and perishable, otherwise, the company had religiously met its monthly rent obligations, save for the month of July 2021 that was due on 5/7/2021. PW1 told the court that the business was a family business, operated by him, his father Premchand Gulabchand Gudhaka, who was also a director of the interested party. He said that during the closure between 4/7/2021 and 7/8/2021, a period of 35 days, he had to meet the staff salaries and security expenses at Kshs. 278,000/= and Kshs. 6,941/=. Likewise, PW1 estimated the daily loss at Kshs. 25,000/= and their monthly sale at Kshs. 5,000,000/=.
12. In addition, PW1 said that during the period the company lost the reputation for some customers understood the same to mean that we do not meet their obligations to the landlord. PW1 said that his father was the overall manager of the company that was incorporated in 2020/2021. Between 2020 and 4/7/2021, PW1 said that rent had been paid going by the bank statements before court. PW1 relied on photographs as P. Exhibit No. 1(a) and (b), copy of certificate of incorporation as P. Exhibit No. 2, bank statement as P. Exhibit No. 3. PW1 insisted that the defendant was aware of who the tenant was for it used to collect cheques from them for almost two years.
13. In cross-examination, PW1 said that his father has been doing business in the suit premises for many years, after the Amal Hardware was registered in 2014 as per CR 12 marked as MFID-1. PW1 said that as per MFID-(2) and (3), he could not tell that the lease was to run from 1/4/2016. PW1 also said that he was not aware of the post-dated cheques to cater for the unpaid rent of Kshs. 4,165,560/=. issued by his father to the defendant. PW1 said that he was unaware of a subsisting lease by the time the plaintiff was incorporated on 30/5/2019 to run upto 2021. PW1 said that there was no written lease agreement between the plaintiff and the defendant, though the latter had been accepting monthly rental payments from the company.
14. Again, PW1 said that the company had not been involved or issued with any receipts for monthly rent payable to the defendant. PW1 said that both the plaintiff and the interested party are companies owned and ran by the same directors, while operating in the same suit premises. PW1 added that after the lease of the interested party expired on 30/6/2021, it was not renewed or extended, the plaintiff remained on the premises for the same was not a stranger to the defendant who had been collecting rent from its directors. PW1 acknowledged that all the rent invoices included in the defendant's list of documents were in the name of the interested party. Equally, PW1 admitted that the letter dated 7/7/2021 was addressed to the interested party to vacate the suit premises.
15. PW1 said that both the plaintiff and the interested party had the same business on the same suit premises. Since payment of the rent was through cheques, issued by the two companies, PW1 admitted that none of the cheques were returned on account of there being no tenancy agreement between



- the plaintiff and the defendant. Equally, PW1 said that the defendant did not complain that the suit premises had been taken over by a different entity. PW1 said that Clause 6 of the lease between the interested party and the defendant required a notice in writing and sent through registered post. Therefore, PW1 said that the notice to vacate dated 7/7/2021 was written after the suit premises had been locked up by the defendant. PW1 said that even though Clause 2 of the expired lease contemplated negotiations on the renewal of the lease, he could not tell if any such negotiation were undertaken.
16. Manaseh Nyaga Njenga, testified as DW1. He relied on a witness statement dated 10/11/2023 as his evidence-in-chief. He told the court that he was a director of the defendant and owner of a commercial building situated on LR No. 2XX6/X9/V, currently Title No. Kitale Municipality Block 4/494. DW1 told the court that he entered into a lease agreement with the interested party to lease a shop on the suit premises on 1/10/2010 with Nechand Gulabchand Gudka T/A Amar Hardware & Electricals for five years 3 months to expire on 31/3/2016. After the expiry, DW1 said that the tenant failed to vacate the shop, to which the defendant filed Kitale ELC No. 95 of 2016, to seek that the tenancy had terminated on 1/4/2016, mesne profits and for an order for vacant possession, or in default eviction to issue. DW1 said that the interested party filed a defence and counterclaim alleging that the rent was too high and a land economist should determine what was the reasonable rent payable. DW1 said that the plaintiff meanwhile, incorporated the interested party on 15/1/2014.
  17. Similarly, DW1 said that a consent was recorded to compromise the suit and a new lease entered into between the defendant and the interested party for 5 years 3 months, with effect from 1/4/2016 to expire on 3/6/2021. DW1 said that upon expiry of the lease, the interested party was to hand over vacant possession and not sublet or give up the suit property to a third party. DW1 said that the tenant did not also seek for an extension of the lease, following which, it locked up the premises on 4/7/2021 and wrote a letter dated 7/7/2021, for the interested party to come and collect its goods from the suit premises. Instead, DW1 said that it was served with court papers by the plaintiff who has never been a tenant since two tenants could not possibly be in the same premises. DW1 said that the fact that the plaintiff used to pay rent on behalf of the Interested Party did not create a tenancy relationship nor could acceptance by it of the cheques create such a relationship. DW1 denied knowledge of the incorporation of the plaintiff as a company, which occurred during the subsistence of a lease with the interested party. DW1 termed the plaintiff as trespasser on the ship, who should vacate or in default be evicted therefrom.
  18. DW1 relied on pleadings in the earlier suit D. Exhibit No. (2), a certificate of incorporation of the defendant dated 19/8/1996, D. Exhibit No. (4) CR 12 as D. Exhibit No. (5), lease dated 1/10/2010, D. Exhibit No. (6), defence on the earlier suit by interested party as D. Exhibit No. (7), consent to compromise the suit as D. Exhibit No. (3), CR 12 showing PW1 as the sole director as D. Exhibit No. (8), CR 12 for the interested party showing Mr. Gudka as the sole director as D. Exhibit No. (9). DW1 confirmed that by the time the interested party was incorporated in 2014, PW1's father was already a tenant of the defendant in the suit premises, hence the reason that all invoices for rent were being sent to him as per D. Exhibit No. 9(a), (b) and (c).
  19. DW1 said that the defendant did not invoice the plaintiff for the rent for it was unknown to him as a tenant. DW1 said that after the lease expired, the interested party did not sue the defendant even though it refused to vacate or seek extension of the lease. Further, DW1 said that there was no existing lease after expiry of the interested party's lease on 30/6/2021. DW1 asked for the plaintiff to vacate the shop and pay outstanding rent of Kshs. 683,650/= as of March 2025 together with mesne profits. DW1 admitted receiving cheque payment for the rent from the plaintiff, even though it was not his tenant or invoiced for the same.



20. DW1 stated that his officers are situated on the same building as the plaintiff and the interested party. Asked if he had seen and read the detail of the big signboard displaced outside the shop, DW1 said that he had not read the same over the years nor could he remember the contents. DW1 admitted padlocking the suit premises without knowing the business owner, yet it was the same tenant who had been issuing cheques to him. DW1 said that it was the interested party who used to bring the cheques to him for the rent, as drawn by the plaintiff. DW1 acknowledged that he locked the suit premises on 4/7/2021 before issuing a formal notice to vacate or hand over vacant possession to the tenant. However, DW1 could not remember for how long the suit premises remained locked up. He said that it took the intervention of the court for him to re-open the suit premises. DW1 said that it could be true that the plaintiff was unable to carry out any meaningful business on the premises during the lock up time. DW1 denied being rigid or unreasonable in locking up the suit premises for the tenant had violated the terms and conditions of the lease.
21. Similarly, DW1 admitted that the cheques for rent were being brought to him in the name of the plaintiff, by the director of the interested party, who told him that his brother was assisting him in the payment of rent. DW1 said that after the lease expired, he did not write to the interested party to vacate the suit premises or demand if he wanted to renew the lease, in line with clause 6(1) thereof.
22. Gudhka Remchand Gulabchand testified as DW2. He relied on witness statement dated 27/7/2023 as his evidence-in-chief. He told the court that PW1, his son was the sole director of the interested party while his son is a director of the plaintiff company, as per the certificate of incorporation and a CR 12 which he produced as interested party's Exhibit Nos. (1), (2) and (3). DW2 said that he was a manager of the interested party though his son PW1 was the one running the business on the suit premises. DW2 added that rent for the suit premises used to be paid by the two companies without any objection from the defendant, for the two companies run the same business. DW2 said that he had been occupying the suit premises since 2002 operating a business firm before it was incorporated into a company in 2014. DW2 said that he had a lease running between 2010 and 2016 as per P. Exhibit No. (6), whose expiry did not stop the business from running. DW2 said that he did not vacate the suit premises upon expiry of the lease since there was a pending case as per D. Exhibit No. (2).
23. Regarding the lease dated 25/2/2019, DW2 said that it was between him and the defendant. DW2 said that in 2020, he changed the business name to the plaintiff, without varying or changing the existing lease with the defendant. DW2 stated that after changing the business name, the interested party ceased to exist though he was yet to legally wind up the company. He also said that he never notified the defendant of the change of business name, though the shop remained the same, regardless of the new status of the tenant.
24. Asked about the invoices for rent payments and payment receipts, DW2 became evasive and was dodging questions. Nevertheless, DW2 told the court that all rent due upto 30/6/2021 and thereafter, was cleared though he had no receipts before the court. DW2 said that he was not supposed to hand over vacant possession after the lease expired, for he was not given any formal notice to do so, as per the contents of the lease. DW2 said that between 2019 and 2021, the suit premises were under the occupation of the plaintiff, hence the payments for rent through the said company. Asked about the receipts for rent payments, DW2 said that he had none.
25. Similarly, DW2 said that he was not aware that he could not continue as a tenant using a different entity. DW2 insisted that there was a sign post displayed outside the suit premises indicating the tenant as the plaintiff after the change of business name. DW2 said that all cheques issued by the plaintiff for rent to the defendant were all honoured by the bank.



26. The plaintiff relied on submission dated 26/3/2025. It is submitted that the plaintiff was a legal tenant by conduct since it remitted rent to the plaintiff without any interruptions. The plaintiff further submitted that there was no subletting or transfer of tenancy thus the lease agreement was not altered.
27. Again, the plaintiff submitted that the counterclaim lacks merit as its occupation of the premises has been with the full knowledge and consent of the defendant. Reliance was placed on Section 57 of the *Land Act*, Sections 107 and 120 of the *Evidence Act*, Section 2 of the *Civil Procedure Act*, Nyaboke & another -vs- Ondieki (Environment and Land Appeal E011 of 2023) [2024] KEELC 5790 (KLR) (30 July 2024) (Judgment) Serah Njeri Mwobi -vs- John Kimani Njoroge [2013] eKLR, Gusii Mwalimu Investment Co. Ltd & 2 others -vs- Mwalimu Hotel Kisii Ltd [1996] eKLR, Willmott v Barber (1880) 15 Ch D 96; 43 LT 95. 12, Gwer & 5 others -vs- Kenya Medical Research Institute & 3 others [2020] eKLR and Macharia Mwangi Maina & 87 Others -vs- Davidson Mwangi Kagiri [2014] eKLR.
28. The defendant relies on written submissions dated X9/3/2025. On whether there was a tenancy agreement between the defendant and the interested party, executed on 25/2/2019, effective from 1/4/2016 to 30/6/2021, it was submitted that there was a valid lease agreement over the said period. The business premises forming part of the building on Kitale Municipality Block 4/494. Equally, the defendant submitted that the defendant would not have had the legal capacity to enter into another agreement with another party during the subsistence of the agreement with the interested party.
- X9. Similarly, the defendant submitted that there was no lease between the defendant and the plaintiff as there cannot exist two tenants at the same business premise. It thus submitted that the plaintiff was a trespasser and should pay mesne profits. Reliance was placed on, Section 120 of the *Evidence Act*, Chon Jeuk Suk Kim And Kim Jong Kyu -vs- E.J. Austin And Others [2013] eKLR Kasturi Limited -vs- Nyeri Wholesalers Limited [2014] eKLR, Attorney General -vs- Halal Meat Products Limited [2016] eKLR, Veeland Housing Company Limited & 2 others -vs- David Waweru Kahinga & 8 others [2021] eKLR.
30. On the other hand, the interested party relied on written submissions dated X9/3/2025, that from the pleadings and evidence tendered, there existed privity of contract between the defendant and the interested party, whose director is not only the father of PW1 but also the operating manager of the plaintiff company. The interested party submitted that the workers of the interested party were also the workers of the plaintiff, hence it cannot be true that there was any alleged subletting of the suit premises from the interested party to the plaintiff company. The interested party submitted that the mere change of name of the tenant midway the lifetime of the lease did not change the contract at all for the defendant continued receiving rent for over 2 years from the plaintiff, without any complaint until the expiry date. The interested party submitted that contrary to the terms and conditions of the lease on expiry and vacant possession, the defendant chose to evict the plaintiff and the interested party in an unorthodox manner through force.
31. The court has carefully read the pleadings, evidence tendered and written submissions by the parties. It is trite law that parties are bound by their pleadings and issues for determination flow from the pleadings, unless an issue has been left for the court to decide by the parties. A court may also not grant what is not pleaded and prayed for by the parties. In Mjanaheri Farm Ltd -vs- China Road & Bridge Corporation & Another Civil Appeal E038 of 2022[225] KECA 711 KLR (9<sup>th</sup> May 2023) (Judgment), the court observed that the alternative prayer in the motion presenting a valuation report was not pleaded by the applicant nor was it a subject of consideration before the court. In Timsales Ltd -vs- Kenya Building Control, Timber Furniture Industries Employees Union (Civil Appeal E009 of 2024) [2025] KECA 831 [KLR] (9<sup>th</sup> May 2025) (Judgment), the court observed that crafting a good pleading calls for precision in drafting, diligence in the identification of the material facts, marshalled in support



of each allegation, an understanding of the legal principles which are necessary to formulate complete cause of action and the judgment and courage to shed what is unnecessary. The court observed that the function of pleading in court proceedings is to alert the other party to the case that they need to meet and to define the precise issues for determination so that the court may conduct a fair trial. The cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action or defence. Material facts are the essential elements of the cause of action. See *Dakianga Distributors Ltd -vs- Kenya See Co. Ltd* [2015] eKLR.

32. A cause of action is action on the part of the defendant that gives rise to a plaintiff to complaint. See *D.T. Dobie & Company (K) Ltd vs Muchina* (1982) KLR 1. In this, suit the plaintiff pleaded that he was a tenant of the defendant from month to month paying Kshs. 126,730/=, inclusive of VAT on Title No. Kitale Municipality Block 2XX6/X9/V now Title Kitale Municipality Block 4/494. Both the plaintiff and the defendant defined issues for determination as per separate lists dated 9/10/2023 and 10/11/2023.
33. It is trite law that issues for determination in a suit remain those of principal parties even where there is an interested party. See *Communications Commission of Kenya & 5 others -vs- Royal Media Services Limited & 5 others* [2015] eKLR and *Francis Karioko Muruatetu & Another -vs- Republic* [2017] eKLR. Having said this, the issues calling for my determination are:
- (a) Whether there was an existing tenancy relationship between the plaintiff and the defendant on 4/7/2021.
  - (b) If the defendant trespassed into the suit premises on 4/7/2021 and continued such acts of trespass till 7/8/2021.
  - (c) If the defendant was justified in locking up the suit premises and preventing the plaintiff access thereof.
  - (d) If he plaintiff is entitled to the reliefs sought.
  - (e) If the defendant is entitled to the reliefs sought in the counterclaim
  - (f) What is the order as to costs.
34. According to the plaintiff, though there was in existence of a lease between 2016 and 2021, the name of the tenant changed with incorporation of both the plaintiff and the interested party, though essentially, the same tenant remained at the shop upto expiry of the lease on 30/6/2021. The plaintiff further pleads and tendered documents that the rent payments were by it to the defendant who also did not object to the change of name. On the other hand, the defendant pleads and testifies that with the expiry of the lease, the plaintiff was a stranger to the suit premises, hence was justified to take over the suit premises. DW2 on the other hand, admits that the lease expired and was not renewed to cater for the plaintiff, but the defendant continued accepting the plaintiff as a tenant, through a different company for the interested party.
35. In *Belinda Murai & Others -vs- Amos Wainaina* [1981] KECA 34 [KLR], the court cited *Cobb vs Lane* [1953] 1 ALCER 1199, that whether or not a relationship of landlord and tenant has been created depends on the intention of the parties and in ascertaining that intention, the court must consider the circumstances in which the person claiming to be a tenant at will went into occupation and whether the conduct of the parties show that the occupier was intended to have an interest in the land or merely as a personal privilege without such interest. Section 2 of the [Land Registration Act](#), defines a periodic lease to mean a lease for year to year, half year to half year, month to month, week to week. Section 57 of [Land Act](#) defines a periodic lease as one which the term is not specified and has no provision made



giving of notice to terminate the tenancy. It could be from week to week, month to month, year to year or other periodic basis to which the rent is payable. It also occurs where a lessee remains in possession of land with consent of the lessor after the term of the lease had expired. Further, it also includes a situation where the owner of the land permits the exclusive occupation of the land to any person at a rent but without an agreement in writing. A periodical tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of tenancy and shall expire on one of the days on which rent is payable.

36. Section 58 thereof defines a short term lease to include a periodic lease. Regarding a situation where a lessee remains in occupation after termination of lease without the consent of the lessor, Section 60 of the Land Act provides that the obligation of the lessee under the lease continues in force, until it ceases being in possession and if the lessor accepts rent in respect of any period of the lease after expiry, that reason of acceptance shall not be deemed that he consented to the lessee remaining in possession of the land, or having given up the right or remedies of the lessor against the lessee for breach of a covenant or condition of the lease and that if the lessor continue to accept rent from the tenant who remains in possession for two months, after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.
37. As to transfer or assignment of a lease, Sections 71 and 72 of the Land Act provides that as long as the transferor or assignor remain in occupation of the leased land, he remains liable to pay rent and comply with all the conditions as long as he remains in occupation if the lease is in existence, until termination. Further, Section 72 thereof provides that a person who accepts a transfer or assignment of a lease should become the lessee and acknowledge the lessor, pay rent, observe and perform all the covenants on the part of the lessee expressed or implied in the lease.
38. Regarding right of lessor, Sections 73, 74, 75 and 76 thereof require a notice of forfeiture without is not defeated after issuance by acceptance of rent. After the notice is issued, the law allows a re-entry to enforce the right of forfeiture or through an action in court. Section 77 of the Land Act relates to unlawful eviction and the right of the lessee to commence action against the lessor for remedies.
39. From the pleadings and the evidence tendered, it is not in dispute that the lease dated 1/10/2010 was between DW2 running Amar Hardware & Electricals before it became the interested party. Out of Kitale ELC No. 92 of 2016, the defendant and the interested party entered into a formal lease dated 25/2/2019, backdating its operation, effect and agreement on outstanding rent payable. The outstanding rent was agreed at Kshs. 4,165,506/=, to be liquidated as per Clause 3(2) of the lease, thereabout the continuance of the lease. Clause No. (6) related to termination notice by registered post, by giving a three-month notice. From D. Exhibit No. 9(a), (b) and (c), the invoices do not bear the full name of the new tenant other than DW2. The letter dated 7/7/2021 was not a three months' notice issued before the lease expired on 30/6/2021 in terms of Clause 6(1) of the lease. It did not raise any issue of pending rent or breach of the terms and conditions of the lease by subletting, assignment or transfer of the lease to a new entity. It did not raise the issue of allowing a new outfit to take up possession for the un expired or expired lease contrary to the lease agreement. There was no mention of what had precipitated the defendant to take such a drastic action of re-entry and locking up the suit premises without giving the requisite notice. In the said letter, the defendant blames the IP for not delivering vacant possession. There is no evidence that the defendant had sought the right to view or inspect the premises before the expiry of the lease.
40. In *Mega Garment Limited -vs- Mistry Jadva Parbat & Co ... (Epz) Limited* [2016] KECA 172 (KLR), the court observed and cited *Bachelor Bakery Ltd -vs- Wellward Securities Ltd* [1982] KLR 366 on unregistered lease that, such a document gives no protection against the right of third parties. In *MNK -vs- POM (ISLA) Petition 9 of 2021* [2023] KESC [KLR] (27<sup>th</sup> January 2023) (Judgment), the



court observed that it is permitted by law to presume the existence of any fact regarding occurrence of natural events, human conduct, public and private business, in relation to the facts of a particular case. The defendant in this suit admits that he knew DW2 and also received cheques from the plaintiff. The explanation according to the defendant is that DW1 told him that his brother was assisting him in rent payments. PW1 and 2 confirmed that there was a sign post displaying the new business operator for close to two years, the defendant was receiving rent in the name of the plaintiff. The bank statements produced in court and account financial statements of the plaintiff shows that rents were paid to the defendant in 2020, on 19/2/2021, 9/3/2021, 18/3/2021, 7/4/2021, 21/5/2021, 4/6/2021, 12/6/2021, 18/6/2021, 6/7/2021, 9/7/2021. 12/7/2021. P. Exhibit No. (3) shows that defendant received rent from the plaintiff to the account as per the cheques issued in the name of the plaintiff.

41. In *Aineah Liluyani Njirah -vs- Aga Khan Health Services* Civil Appl. No. 194 of 2009 [2013] KECA 481 [KLR] (12<sup>th</sup> July 2013) (Ruling), the court observed that when a contract expressly benefits a third party, there is a presumption that the contracting parties intended the third party to have a right of enforcement. The court said that in interpreting a contract, the court has to look at all the circumstances surrounding the transaction. See also *Savings & Loan (K) Ltd -vs- Kanyanja Karangarita Gakombe & Another* [2015] KECA 784 [KLR]. In *NKB Ltd -vs- Insurance Exparte Ltd* [2022] KECA 141 [KLR] (18<sup>th</sup> February 2022) (Judgment). The defendant admits that it received rent from the plaintiff for a while, even though it did not question the capacity in which the plaintiff was on the premises and whether it had been sublet or transferred or assigned the lease before its expiry. The acceptance of the rent from the plaintiff was an admission of the capacity in which the two parties were on the suit premises. Admission of facts in law can be express or implied, either on the pleadings or otherwise through correspondence.
42. The defendant through the further amended defence and counterclaim dated 9/6/2024, at paragraph 9B admits receipt of the cheques for rent from the plaintiff. The doctrine of estoppel bars the defendant from denying obvious facts of receipt of cheques drawn by the plaintiff and cashed through its bank for rent due and owing by the interested party. The defendant at paragraph 9C thereof cannot be justified in law and deny that there was periodic tenancy relationship between the plaintiff and itself as of 4/7/2021, more so after accepting cheque numbers 1773, 1774, 1775, 1807, 1808, 1809 and 1810, on the eve of and after the lease with the interested party had expired, going by P. Exhibit No. (3). See *Chotran & Another -vs- Nazari* (Civil Appeal No. 8 of 1982) [1984] KECA 47 [KLR] (20<sup>th</sup> January 21984) (Judgment).
43. It is the duty of the court to ensure that no individual is prevented from taking possession and or from enjoying their property. A tenant cannot impose or force himself on a landlord. Equally, the law provides for a notice to be issued where a lease expires or where a party is supposed to give vacant possession. Courts do not rewrite contracts but enforce them, unless the contracts suffer defects of law under Section 3(3) of the [Law of Contract Act](#) and Section 28 of the [Land Act](#).
44. In this suit, the defendant accepted rent from the plaintiff a company related to the interested party, who had been a tenant since 2002 with the defendant. Therefore, while aware of receipt of rent due for the month of July 2021, the defendant unilaterally and without notice gained entry into and locked up the suit premises before giving the plaintiff or the interested party an opportunity to collect, remove and hand over vacant possession. In my considered view, the plaintiff was right to move to court to remedy the situation for the defendant was out to steal a match from it. See *Belle Maison Ltd -vs- Yaya Towers Ltd* HCCC No. 2225 of 1992 and in *Ripples Ltd -vs- Kamau Machuha*, HCCC No. 4922 of 1992.
45. Trespass is the entry into and commission of unlawful acts on private land in possession of another, without lawful authority. The payment of rent and possession of the suit premises by the plaintiff was



with knowledge or consent of the defendant. The plaintiff had an established right or interest in this suit premises. In *M'Kiriara M'Mukanya & another -vs- Gilbert Kabeere M'Mbijiwe* [1984] KECA 21 (KLR), the court said that for a person to prove trespass, he has to show he had immediate possession and that he entered in exercise of it. Trespass is a tort of violation of the right to possession. The plaintiff has proved that it had been on the shop premises for over a year and had also paid rent upto July 2021. The defendant knew those facts and if at all the plaintiff was a stranger on the shop, the best cause of action was not to take the law into its own hand, but to issue an eviction notice in line with Section 152 (a-f) of the *Land Act*.

46. In my considered view, the evidence of the defendant that it was justified to break in and lock up the premises cannot amount to lawful justification to evict or drive out the plaintiff from the shop premises. Trespass is actionable per se without proof of any damages. The defendant has been unable to prove through document any pending rent arrears as of 4/7/2021 or 30/6/2021, when the lease with the interested party expired. The defendant failed to issue a formal notice to vacant or handover vacant possession until on 7/7/2021, long after locking up the premises on 4/7/2021. The notice of 3 months was not issued as per Sections 72-76 of the *Land Act*. See *Tiwi Beach Hotel Ltd -vs- Julian Ulrike Stann* [1990] 2 KAR 189. In *Gusii Mwalimu Investment Co. Ltd -vs- Mwalimu Hotel Kisii Ltd* [1996] eKLR, the court said that unless a tenant consents or agrees to give possession, the landlord has to obtain court orders to obtain vacant possession. In *Ripples Ltd (supra)*, the court said that a landlord has to institute a suit for courts frown up on the use of the law of the jungle. Court equally remedy such action by a way of damages against those who chose not be led by the rule of law. In *Mattarella Ltd -vs- Michael Bett & Another* [2018] eKLR, the court awarded damages for breach of the law as reprieve for the violation right at Kshs. 2,000,000/= to curtail and discourage such vies or impunity.
47. The plaintiff has produced documents to support its claim for special damages. Special damages must be specifically pleaded and proved as held in *NSSF -vs- Sifa Ltd* [2016] eKLR. Section 77 of the *Land Act* provides the way forward in a case of unlawful eviction. The defendant does not dispute that even after a court order was issued for the return of the plaintiff to the suit premises, he hesitated to do so.
48. The defendant is seeking mesne profits of Kshs.506,920/= and rent per month of Kshs. 126,730/=, from the plaintiff and not the interested party. It is a contradiction to plead that the plaintiff was not a tenant and should also be ordered to pay for rent, yet the bank statements show that payments were upto date by 4/7/2021 and thereafter, more payments were made.
49. The upshot is I find the plaintiff entitled to the reliefs sought in the amended plaint dated 10/5/2025. Prayers (b) and (bi) are allowed. Prayer (a), not granted, given that the plaintiff has not regularized the terms and conditions of the lease with the defendant. Parties are granted 3 months to negotiate the same during which the plaintiff shall continue paying the rent per month of Kshs. 126,730/= every 5<sup>th</sup> day of the month. The counterclaim dated 4/6/2024 is dismissed with costs. Costs of the suit to the plaintiff.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

**In the presence of:**

Court Assistant - Dennis

Parties present

Kiarie for the Defendant present

Miss Nafula for Samba for the Plaintiff present



Nyakundi for Interested Party absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

