



**Muhembeli v Limo & 3 others (Environment & Planning Appeal
E002 of 2023) [2025] KEELC 5109 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5109 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & PLANNING APPEAL E002 OF 2023**

A NYUKURI, J

JULY 2, 2025

BETWEEN

WINLORD MUHEMBELI APPELLANT

AND

HILLARY LIMO 1ST RESPONDENT

DENNIS ACHESA 2ND RESPONDENT

JAMES AKOTO 3RD RESPONDENT

MOSES MUNUBI ENDEHELI 4TH RESPONDENT

JUDGMENT

1. This appeal was filed by Winlord Muhembeli challenging the judgment of the Business Premises Rent Tribunal at Kakamega made on 24th November, 2023 in respect of three cases namely Tribunal case No. E090 of 2022, Tribunal case No. E091 of 2022 and Tribunal case No. E092 of 2022. In the impugned judgment, the tribunal found that the Notices to terminate and or alter terms of tenancies issued by the appellant herein on the respondents were invalid. The tribunal further found that Moses Munubi, the 3rd respondent to be the bona fide landlord of Mr. Hillary Limo, Dennis Achesa and James Akoto [the 1st to 3rd respondents]. Further, Winlord Muhembeli was ordered to keep off the suit premises being plot No. 78B Mbale market and also restrained from interfering with the tenants' quiet occupation of the suit premises. The OCS Mbale was ordered to enforce compliance with the orders and Winlord Muhembeli was ordered to pay costs of Kshs. 75,000 to the three tenants namely Hillary Limo, Dennis Achesa and James Akoto in equal shares and pay costs of Kshs. 25,000 to Moses Munubi Endeheli.

Background

2. Winlord Muhembeli issued notice dated 9th May, 2022 to Hillary Limo; notice dated 16th April, 2022 to Dennis Achesa and notice dated 9th May, 2022 to James Akoto. In those notices, he was claiming rent



of Kshs. 96,000 and Kshs. 320,000 respectively from the respondents. Winlord directed the tenants to pay their rents to a bank account No. 096*****8611 at Equity Bank in the name of Grace, Monica and Hillary

3. Subsequently on 12th September, 2022, Winlord filed three separate complaints against Dennis Achesa, James Akoto and Hillary Limo stating that the three tenants had not filed references to oppose his notices aforesaid and that they should pay rent arrears and vacate the premises.
4. On 21st October, 2022, Moses Munubi Endeheli the interested party filed an application seeking joinder to the proceedings before the tribunal on the basis that he was the lawful landlord to the tenants herein occupying Plot No. Mbale 78B and that the appellant had never been the landlord in respect of the tenants herein. He maintained that he had existing and valid tenancy agreements with the tenants. In addition to the application for joinder the interested party also filed supporting affidavit and reply to the landlord's case as well as his statement. The tenants filed replying affidavits and statements. The parties filed statements being evidence in support of their respective cases. The case was heard by viva voce evidence.

Applicant's case

5. LW1 was Winlord, the applicant in the case. His evidence was that together with, one Eliud Enyavo Ebwaga they were the legal owners of plot 71 Mbale Market after succeeding the estate of the late Andrew Muhubu. That in 1972 his father Timothy Endeheli was given a permit to occupy Plot No. 78 Mbale market which had been curved off plot No. 71. He complained that due process was not followed in hiving off the said plot leading to confusion and that he looked to the Tribunal to resolve the legality of the said acquisition. That he learnt from Vihiga County Government that his parcel No. 71 was reflected as plot Nos. 69, 78A and 78B belonging to Penina Endeheli.
6. In cross-examination, he stated that his mother was the late Mary Endeheli and that Moses Munubi's mother was Penina Endeheli. That Mary and Penina were wives of Timothy Endeheli who owned plot No. 78. That he did not know Penina's plot but that Mary Endeheli used to receive rent from tenants on plot No. 78. He denied receiving rent from any of the tenants and stated that he did not know who receives rent. That he had seen documents showing Moses Munubi receives rent. That Penina used to receive rent from plot No. 71.
7. The witness confirmed that he did not have any tenancy agreements with the tenants in the case. He stated that his problem was that Moses Munubi was the one receiving rent. He stated that there were letters from the County Government demanding rates from Mary Endeheli in respect to plot No. 78A and a letter demanding rates from Penina in respect of plot No. 78B. He stated that the Succession Cause related to plot No. 71 and that he was not aware that plot No. 78 had been subdivided into 78A and 78B. That marked the close of the applicant's case.

Tenants' case

8. TW1 was James Musaga Akoto who stated that he had no landlord/tenant relationship with the applicant. That he was a tenant on plot No. 78B of Peninah Endeheli, the mother of Moses Endeheli and has been a tenant since 1992 with no default in rent payment.
9. In cross-examination, he stated that he had a tenancy agreement with Penina Endeheli and that upon her death, he entered into a tenancy agreement with Moses Endeheli and only came to know the applicant when he filed the case.



10. TW2 was Dennis Achesa who stated that he was a tenant of Peninah Endeheli and upon her death he became the tenant of Moses Endeheli. On cross-examination he stated that he had been paying rent to Moses Endeheli. He produced receipts for rent payment.
11. TW3 was Hillary Limo who stated that he was a tenant on plot No. 78B since 2021 and that his landlord was Moses Endeheli. He produced a tenancy agreement. On cross-examination he stated that his landlord was Moses Endeheli.
12. TW4 was Moses Munubi Endeheli who stated that plot No. 78B belonged to his late mother Peninah Endeheli while plot No. 78A belonged to Mary Endeheli, Winlord's mother. That the original landlord for plot 78B was his mother while the family of Winlord collects rent in respect of plot No. 78A. He maintained that the tenants sued herein were his tenants and that he has no claim of rent against them. In cross-examination, he stated that he could not explain the change of numbers of the plot from 78 to 78A and 78B as the subdivision was done by their respective mothers in 1993 before succession was done. He maintained that he had tenancy agreements with the tenants.
13. Upon consideration of pleadings and evidence, the Tribunal found that it was not its concern was on who owned plot No. 78B as the issue before them was the question of tenant/landlord relationship. That the applicant's claim was based on ownership which is a question that should be brought before the Environment and Land Court and not the tribunal. The tribunal further found that the applicant failed to demonstrate that he was the landlord. It further stated that a landlord is not necessarily an owner but means the person for the time being entitled to rent and profits from the premises payable under the terms of the tenancy. The tribunal held that the applicant did not own plot No. 78B and there was no evidence of a landlord/tenant agreement with tenants or where he demonstrated having received rent. It also found that the applicant was obligated to pay the respondents costs.
14. Aggrieved with these findings, the appellant herein appealed against the decision of the tribunal vide a memorandum of appeal dated 8.12.2023 citing the following 11 grounds;
 - a. The tribunal erred in law and in fact by usurping the jurisdiction of the High Court Probate and administration court that had heard Kakamega High Court Succession Cause No. 889 of 2013, determined the same and distributed the estate vesting the suit property jointly to the appellant together with Eliud Engavo Embwaga.
 - b. The tribunal erred in law and in fact by ignoring the fact that the estate of the deceased Andrew Munubi no longer existed, the same been legally distributed and the suit properties passed to the appellant to be owned jointly with Eliud Engavo Embwaga.
 - c. The tribunal erred in law and in fact by failing to put due weight to the glaring evidence produced by the appellant which clearly indicated that the 4th Respondent is illegally receiving rent income from the suit property, without following due process of law.
 - d. The tribunal erred in law and in fact by failing to accord an opportunity to be heard to Eliud Engavo Embwaga despite the appellant bringing to its attention that the suit property is jointly owned by them.
 - e. The tribunal erred in law and in fact by rushing to deliver its judgment and failing to accord the appellant enough time to even file his submissions before delivering its judgment.
 - f. The tribunal erred in law and in fact by twisting the facts and evidence to suit its bias against the appellant in favour of the respondent.



- g. The tribunal erred in law and in fact in not determining that none of the respondents had proven his case on a balance of probabilities.
 - h. The tribunal erred in law and in fact in stiking the appellant with huge amounts of costs which is a clear indication of its biasness against the appellant that is meant to shutter the appellant from enjoyment if his rightful inheritance despite the appellant proving to it as being the landlord recognized by law.
 - i. The tribunal erred in law and in fact by giving an extremely shallow judgment that ignored pertinent issues and totality of the case.
 - j. The tribunal erred in law and in fact in ignoring and failing to consider the numerous points of law raised in the pleadings on behalf of the appellant.
 - k. The Tribunal erred in law and in fact by failing to determine the main issue at hand which was to order the 1st, 2nd, and 3rd respondents to pay their rent to the rightful landlords who are the appellant and Eliud Engavo Embwaga.
15. Consequently, the appellant sought the following orders;
- a. The appeal be allowed.
 - b. The tribunal judgement be overturned and/or dismissed.
 - c. Costs of this honourable court and the tribunal be awarded to the appellant.
 - d. Any other order this honourable court may deem just and expedient to grant.
16. The appeal was canvassed by way of written submissions. On record are the appellant's submissions dated 11th December 2024 and the respondent's submissions dated 21st March 2025.

Appellant's submissions

17. The appellant submitted that he presented all relevant documents including the grant of administration and certificate of confirmation of grant for the late Andrew Munubi his late grandfather and owner of the suit land where the suit premises are situated and that he is now the legal representative of the estate of late Timothy Endeheli owner of the suit premises. That in contrast, the 4th respondent only brought a will to prove ownership of the suit premises and that the will was conferring the suit property illegally as it confirmed one property to 3 people. The appellant argued that the permit of occupation was in regard to plot No. 78 and that how that plot became Nos. 78A and 78B is questionable.
18. On whether the grounds of appeal raised triable issues, the appellant submitted that the tribunal side stepped the weight of evidence of succession proceedings showing that the suit property was vested in the appellant. That the succession cause distributed the estate between the appellant and one Eliud Engavo. He argued that the tribunal was wrong in finding that the 4th respondent was lawfully receiving rent. That the tribunal paid more attention to parties represented by an advocate and ignored his evidence because he was unrepresented.
19. Further, the appellant argued that the tribunal was wrong and awarded hefty costs with no justification. He submitted that he tried to convince the tribunal in vain that he was the rightful beneficiary of the suit property and hence the landlord. He argued that the tribunal was biased. On costs of the appeal, the appellant argued that the same ought to be paid by the respondents.



Respondents' submissions

20. Counsel for the respondent relied on section 2 of the Landlord and Tenant [shops, hotels, and catering Establishments] Act [Cap 301] on the definition of "landlord". Counsel submitted that the 4th respondent demonstrated by documentary evidence that he was the landlord of the 1st to 3rd respondents. Counsel argued that plot Nos. 78A and 78B were adjacent to each other and that there was nothing wrong with the 4th respondent receiving rent for plot No. 78B.
21. It was further contended for the respondent that the grant obtained by the appellant in the Succession Cause, was in respect of plot No. 71 whereof the appellant was unable to register the same as plot No. 71 does not exist on Mbale market. Reliance was placed on the case Kakamega ELC 33 of 2017 *Winlord Muhembeli v County Government of Vihiga* for the proposition that the court pronounced itself on the question of ownership as the court found that the appellant failed to prove that plot No. 71 Mbale market exists.

Analysis and determination

22. The court has carefully considered the appeal, parties' rival submissions, and the entire record of the tribunal. The mandate of this court as a first appellate court is to re-evaluate, re-analyze and re-assess the evidence on record and make its own independent conclusions, bearing in mind that it had no advantage of seeing or hearing the witnesses, and make due allowance for that. This position was stated in the Cases of *Selle & Another v Associated Motion Boat Co. Ltd & Others* [1968] EA 123 and *Peters v Sunday Post* [1958] EA 424.
23. Since a first appeal is decided on facts and the law, the first appellate court is ordinarily the final court on facts and therefore on appeal, parties deserve an independent, fair and full consideration of the evidence as anything short of that would amount to an injustice. Thus, the mandate of this court as a first appellate court is to apply its mind to the entire case, re-evaluating both questions of fact and law and considering all issues arising from the case.
24. Having considered the appeal herein the issues that arise for the court's determination are;
 - a. Whether in the absence of a tenancy agreement and receipt of rent by the appellant from the tenants on the suit premises, the appellant is entitled to rent and eviction orders against the tenants on the basis of his claim that he is the lawful owner of the suit premises.
 - b. Whether there is justification for this court's interference with the tribunal's award of costs.
25. It is not in dispute that the 1st to 3rd respondents are tenants on premises on plot No. 78B at Mbale Market. It is also not disputed that the appellant has never entered into any tenancy agreement with the 1st to 3rd respondents and has also never ever received rent from the said respondents. Further, there is no contention that the 4th respondent has been receiving rent from the 1st to 3rd respondents, who had been previously paying rent to Penina Endeheli, the 4th respondent's mother. The appellant's claim is that his father's plot is plot No. 78 and he does not know how plot 78 translated into or was subdivided into plot Nos. 78A and 78B. He insists that by virtue of the grant of letters of administration issued to him in Kakamega Succession cause No. 889 of 2013, he owns plot No. 78 and 0r No. 71 and or No. 78B and should be allowed to receive unpaid rent and evict the 1st to 3rd respondents for default in rent payment.



26. Section 2 of the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act* [Cap 301] defines landlord as follows;

“Landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy;

27. The Act further defines “tenancy” as follows;

“Tenancy” means a tenancy created by a lease or underlease, by an agreement for a lease or underlease by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such;

28. Therefore, a person who claims to be a landlord must demonstrate that there exists terms of a tenancy between him and the tenant, which entitle him to rents and profits in respect to the premises subject of the tenancy agreement. On the other hand, a tenancy is a lease and or sublease agreement between a landlord and tenant. It is therefore clear that ownership of leased premises is not a consideration on whether or not there exists a tenant-landlord relationship. That relationship is created by parties with intention to be legally bound as such and cannot be presumed on the basis of claims of ownership.

29. Section 107 of the *Evidence Act* places the burden of proof on the claimant.

30. Therefore, the appellant having claimed to be owed rent and having sought eviction against the respondents, was obligated in law to prove that there existed terms of tenancy agreement between him and the 1st to 3rd respondents that would entitle him to claim rent or profits under such tenancy. In the instant case, as the appellant herein has no tenancy agreement with any of the 1st to 3rd respondents, he is not entitled to rent and profits and is not a landlord in relation to the rented premises and hence could not lawfully ask the Tribunal for eviction of the 1st to 3rd respondents.

31. Questions of ownership of title are not questions which the tribunal is mandated to resolve. Under section 12 of the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act* [Cap 301], provide for the jurisdiction of the Tribunal as follows;

12. Powers of Tribunals

1. A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—
 - 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 apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;
 - d. Where the rent chargeable in respect of any controlled tenancy includes a payment by way of service charge, to fix the amount of such service charge;
 - e. To make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may



be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;

- f. For the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession;
- g. where the landlord fails to carry out any repairs for which he is liable—
 - i. To have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;
 - ii. to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;
- h. To permit the levy of distress for rent;
- i. To vary or rescind any order made by the Tribunal under the provisions of this Act;
- j. To administer oaths and order discovery and production of documents in like manner as in civil proceedings before the High Court, to require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies, and to issue summons for the attendance of witnesses to give evidence or produce documents, or both, before the Tribunal;
- k. To award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;
- l. To award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;
- m. To require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend, the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;
- n. To enter and inspect premises comprised in a controlled tenancy in respect of which a reference has been made to the Tribunal.

32. Therefore, the Tribunal's jurisdiction is to determine disputes arising where there exists a landlord/tenant relationship between the parties, and more specifically deal with questions regarding determination of whether the tenancy between the parties is controlled; payable rent; fixing service charge; recovery of possession; repair of premises; allow levy of distress; award compensation to a tenant on termination of controlled tenancy and award costs on references.

33. Questions of ownership of title and whether or not property acquisition was lawful are questions for determination by the Environment and Land Court [ELC] as delineated under Article 162 [2] [b] of *the Constitution* as read with section 13 of the *Environment and Land Court Act*, which grants the ELC power to determine questions of the environment and the use and occupation of, and title to, land.

34. As there was no landlord/tenant relationship between the appellant and the 1st to 3rd respondents, and the appellant having never received rent from the said respondents, it follows that the appellant is not



the landlord in respect to premises on plot No. 78B at Mbale market, notwithstanding his claim of ownership thereof as between himself and the 4th respondent and therefore he is not entitled to his claim of rent and eviction against the 1st to 3rd respondents. In the premises, I find and hold that the tribunal was right in concluding that there was no tenancy relationship between the appellant and the 1st to 3rd respondents. It was also right in dismissing the appellant's claim.

35. On costs, the tribunal awarded Kshs. 75, 000/= to the 1st to 3rd respondents and Kshs. 35, 000/= to the 4th respondent which included legal fees as that respondent was represented by counsel. The appellant argued that the costs were exorbitant. An award of costs is an exercise of discretion and section 12 [1] [k] of the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act* [Cap 301], grants the tribunal power to award costs in regard to references. This court will not interfere with the exercise of discretion of a tribunal unless it is shown that the tribunal misdirected itself or failed to consider the relevant matters or considered irrelevant matters and arrived at a wrong conclusion.
36. In the case of *Mbogo v Shah*[1968] E a page 93 in which *De Lestang v* [as he then was] observed at page 94 as follows;
- “I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
37. Having considered the award of costs made by the tribunal of Kshs. 75, 000/= in respect of the 1st to 3rd respondents and Kshs. 35, 000/= in regard to the 4th respondent, no material has been placed before me to demonstrate that the award was based on irrelevant matters or that the tribunal misdirected itself in making the award. In any event, an award of Kshs. 75, 000 for the 1st to 3rd respondents and Kshs. 35, 000/= for the 4th respondent in my view cannot be said to be exorbitant in the current economic times. Therefore, there is no justification for this court's interference with the tribunal's award of costs.
38. For the above reasons, I find no justification to interfere with the tribunal's findings. In the premises, I find no merit in this appeal, which I hereby dismiss with costs to the respondents.
39. It is so ordered

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 2ND DAY OF JULY, 2025.

A. NYUKURI

JUDGE

In the presence of;

Mr. Winlord Muhembeli the appellant in person.

Mr. Osango for the respondent

Court Assistant: M. Nguyai

