



Consolidated Bank Kenya Ltd v Chedders Investment Limited (Environment and Land Appeal E048 of 2022) [2025] KEELC 5985 (KLR) (10 September 2025) (Judgment)

Neutral citation: [2025] KEELC 5985 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E048 OF 2022
CG MBOGO, J
SEPTEMBER 10, 2025**

BETWEEN

CONSOLIDATED BANK KENYA LTD APPELLANT

AND

CHEDDERS INVESTMENT LIMITED RESPONDENT

(Being an appeal from the ruling and order of Hon. Patricia May, Vice Chairperson of the Business Premises Rent Tribunal delivered on 25th May, 2022 in Tribunal Case Bo. E830 of 2021)

JUDGMENT

1. Being dissatisfied with the ruling and order of Hon Patricia May, the Vice Chairperson of The Business Premises Rent Tribunal delivered on 25th May, 2022, the appellant filed the memorandum of appeal dated 22nd June, 2022 challenging the said decision on the following grounds:-
 1. The learned Vice Chairperson erred in fact and in law in finding that there was no tenancy in writing between the landlord and the tenant.
 2. The learned Vice Chairperson erred in fact and in law in finding that the letter of offer dated 25th January, 2019 had been withdrawn while acknowledging that the parties in fact signed the said offer letter, acted on the same and were bound by the terms of the said agreement.
 3. The learned Vice Chairperson erred in fact and in law in finding that the tenancy was a controlled tenancy despite the same being reduced into writing for a term of 6 years.
 4. The learned Vice Chairperson erred in fact and in law in misapprehending the fact that once the offer letter was accepted by the tenant signing the acceptance page, the same became binding upon the parties and vitiated the clause 21 with respect to lapse of offer.



5. The learned Vice Chairperson erred in fact and in law in failing to uphold the offer letter as a contract reduced in writing for purposes of the jurisdiction of the tribunal.
 6. The learned Vice Chairperson erred in fact and in law in failing to uphold the sanctity of contract between the landlord and the tenant hence unlawfully extending the jurisdiction of the tribunal to cover the tenancy herein, which is not controlled.
2. The appellant prays for judgment against the respondent as follows: -
1. The decision of the Vice Chairperson of the BPRT rendered on 25th May 2022 is hereby vacated and set aside.
 2. The offer letter dated 25th January, 2019 is binding upon the parties.
 3. The tenancy between the appellant and the respondent having been reduced into writing in the form of the offer letter dated 25th January, 2019 the tenancy is not a controlled tenancy.
 4. Costs of this appeal and the tribunal be awarded to the appellant.
3. The grounds of appeal were canvassed by way of written submissions. The appellant filed its written submissions dated 26th March, 2025 where it raised the following issues for determination:-
- a. Whether the signed offer letter dated 19th January, 2019 amounts to was a tenancy in writing and a valid contract between the appellant and the respondent.
 - b. Whether it is a controlled tenancy within the meaning of Section 2 (1) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act.
 - c. Whether the honourable tribunal had the jurisdiction over the subject tenancy.
4. On the first issue, the appellant submitted that at no point during the course of the proceedings before the tribunal that the respondent challenged the validity of the offer letter or disputed having executed the same. While relying on the case of *Diamond Homes Limited v Shapi* (Civil Appeal 118 of 2021) [2024] KECA 1161 (KLR) (20 September 2024) (Judgment), the appellant submitted that there was a valid contract between the parties.
5. On the second issue, the appellant submitted that the tenancy agreement between the parties had been reduced into writing and was for a period exceeding five years. Thus, the same does not fall within the meaning of a controlled tenancy as provided for in Section 2 of the Act. The appellant relied on the case of *Restore and Renew Wellness Group Limited v Tradeline Express Company Limited & another* (Environment & Land Case E129 of 2023) [2024] KEELC 75 (KLR) (15 January 2024) (Ruling).
6. On the third issue, the appellant submitted that in light of the fact that the tenancy was not a controlled tenancy, and pursuant to the provisions of Section 2 (1) of the Act, the jurisdiction of the tribunal does not extend to the tenancy between the parties. Further reliance was placed in the cases of *Owners of The Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment), *Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others* [2012] eKLR and *Bakery Ltd v Westlands Security Ltd* (Civil Appeal No. 2 of 1978).
7. The respondent filed its written submissions dated 18th June, 2025 where it raised three issues for determination as follows: -
- i. Whether the letter of offer dated 25th January, 2019 reduced the tenancy relationship into a tenancy in writing.



- ii. Whether the tenancy was a controlled tenancy.
 - iii. Whether the tribunal had jurisdiction to determine the dispute.
8. On the first issue, the respondent submitted that pursuant to clauses 21 and 23 of the letter of offer, the same cannot be deemed to have been a tenancy reduced into writing, and that the offer was very categorical that the instrument meant to establish a tenancy in writing could only have been an executed lease. The respondent submitted that the court ought not to aid the appellant in their argument that the letter of offer purported to have reduced the tenancy into writing as this would be bad in law and an afterthought. The respondent relied on the case of *Amina Karama v Njagi Gachagua & 3 others* [2020] KEELC 186 (KLR).
 9. On the second issue, the respondent submitted that the tenancy was never reduced into writing and therefore it is a controlled tenancy. That if the impugned tenancy were found valid, it would have created a tenancy that relates to premises of a class specified under subsection (2) meeting the pre-requisite for a controlled tenancy.
 10. On the third issue, the respondent submitted that whether or not the tenancy was reduced into writing, the same was a controlled tenancy which the tribunal was seized with the jurisdiction to determine the issues arising from such disputes.
 11. I have considered the grounds of appeal and the written submissions. The issue for determination is whether the appeal has merit.
 12. This is a first appeal and the law is that this court is entitled to revisit the evidence on record, evaluate it and arrive at its own conclusion. Often times, an appellate court will not interfere with the findings of fact by the trial court unless they were based on no evidence at all, or were arrived at on a misapprehension of it or the trial court is shown to have acted on wrong principles in arriving at those findings as it was held in *Mwanasokoni versus Kenya Bus Service Ltd* 1982 – 88 I KAR 278.
 13. The appellant herein challenges the ruling of the tribunal on the grounds that it failed to find that there was a lease agreement between the parties, and thus by meaning of Section 2 of Cap 301, the tribunal did not have jurisdiction to determine the dispute as the period of tenancy was for more than five years. I have carefully analysed the ruling, and the tribunal correctly brought out the issues before it, and before determining anything else, it dealt with the issue of jurisdiction. Central to the jurisdiction of the tribunal was the offer of lease which I have had the opportunity to read, and as rightly stated by the tribunal, the same was an offer of lease which was to exist for 7 days. As pointed out, and from the record of appeal, besides the offer of lease dated 25th January, 2019 there is no evidence of a lease entered into by the parties to solidify this offer. I do agree with the tribunal's interpretation of the relationship that existed subsequently after the lapse of the offer to that of a periodic tenancy whose jurisdiction lied therein.
 14. Having carefully considered the grounds of appeal, I find no reason to disturb the findings of the tribunal. The memorandum of appeal dated 22nd June, 2022 lacks merit and it is hereby dismissed. Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 10TH DAY OF SEPTEMBER, 2025.

HON. MBOGO C.G.

JUDGE



10/09/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kamau for the Respondent

Wambugu & Muriuki for the Appellant – absent

