



**Wanjiku v Wanyingi (Environment and Land Appeal E013 of 2023)
[2025] KEELC 5992 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E013 OF 2023
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

MERCY WANJIKU APPELLANT

AND

JAMES WANYINGI RESPONDENT

(An appeal against the ruling of Hon. Andrew Muma (Vice Chairperson) of the Business Premises Rent Tribunal(the Tribunal) delivered at Embu on 3/8/2023 in Tribunal Case No. E011 of 2023)

JUDGMENT

1. This appeal is against the ruling of Hon. Andrew Muma (Vice Chairperson) of the Business Premises Rent Tribunal(the Tribunal) delivered at Embu on 3/8/2023 in Tribunal Case No. E011 of 2023. The appellant, Mercy Wanjiku filed a reference and an application dated 10/2/2023 seeking to restrain the respondent from harassing and evicting her from the respondent's suit premises situated in Embu County known as Jeyz Club. She sought have the respondent compelled to return the sum of Kshs. 50,000/= to her. She also sought an order to compel the respondent to open the suit premises in default of which, she should be allowed to break into the premises and take possession under the supervision and security of the Officer Commanding Embu Police Station. She also sought the costs of the application.
2. The application was made on the grounds that the respondent locked the appellant out of the business premises with padlocks while all her trading goods were inside the premises, without giving her proper notice contrary to Section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#). She averred that the respondent broke into the suit premises and took away the sum of Kshs. 50,000/= and beer stock which she reported to the police and was given an occurrence book (ob) number. She averred that she was only in rent arrears of Kshs. 5,000/= and that rent per month was Kshs. 8,000/=. She maintained that the respondent did not have the right to evict her from the suit premises and urged the Tribunal to allow the application.



3. The respondent filed a replying affidavit in which he deponed that he entered into a tenancy agreement with the appellant on 8/6/2021, and that it was an express term of the agreement under clause 3, that rent was payable at the beginning of the month before the 15th day. He averred that the appellant consistently breached the terms of the tenancy by paying rent on erratic dates. He explained that in 2022 alone, the appellant's rent for January, March, April, May and December was paid later than the 15th as highlighted in his Mpesa statement.
4. He added that clause 2 of the agreement stipulated that for the first year, the rent would be Kshs. 8,000/= and thereafter it would increase by 10% every year. He stated that the first year ended on 8/6/2022 and thereafter the rent payable was Kshs. 8,800/=, but the appellant did not factor the increment hence she was in breach of the agreement. The Respondent denied that the appellant's rent arrears were Kshs. 5,000/= only and averred that in 2022, the appellant was in rent arrears for the months of February, May (Kshs. 1,000), June, July, August and October, totaling to Kshs. 54,000/= and that the arrears continued to increase. Further, he stated that the agreement provided under clause 1, that the appellant would pay a deposit of Kshs. 10,000/= made up of Kshs. 8,000/= as rent and Kshs. 2,000/= for utilities within the first 5 months which the appellant did not pay.
5. He added that clause 9 of the agreement provided that in case of rent arrears for a period of two months, the respondent would take possession of the premises without any further conditions. He averred that his actions of regaining possession of the premises including locking the appellant out was in line with the tenancy agreement. He denied that he broke into the premises, took away money and beer stock as the Appellant alleged. He urged the Tribunal to dismiss that application. The respondent attached a copy of the tenancy agreement and his Mpesa statement to his affidavit.
6. After hearing parties, the Tribunal in its ruling found in favour of the respondent and dismissed the appellant's reference and application. It directed the appellant to clear the arrears of Kshs. 91,400/= comprised of Kshs. 51,400/= as rent accrued for 2022 and Kshs. 40,000/= for 2023 on or before 31/7/2023, failing which, the respondent would be at liberty to distrain for rent and take vacant possession of the suit premises and break in if need be. The OCS Embu Central police Station was to assist with compliance and each party was directed to bear its costs.
7. The appellant raised six grounds of appeal in her Memorandum of Appeal. She faulted the Tribunal for dismissing her application and failing to consider the evidence and documents produced by the parties before making a determination; and for relying heavily on the evidence produced by the respondent and for finding that she did not prove her case on a balance of probabilities. She invited this court to allow the appeal by setting aside the ruling of the Tribunal and provide for the costs of the appeal.
8. The court directed parties to file and exchange written submissions, which it has considered. The appellant submitted that the closure of the business premises without notice contravened Section 4(3) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. Further, that the Tribunal selectively accepted the respondent's version of events without scrutinizing the contradictions which resulted in a decision that was unsustainable. She further submitted that the appellant's evidence clearly demonstrated the absence of notice, lack of Tribunal orders for eviction and the substantial business losses suffered by her. She cited several cases in support of her case and urged this court to allow the appeal.
9. The respondent submitted that the appellant did not adduce any evidence that the Tribunal could have relied upon or considered whereas he adduced Mpesa statements, witness statements and an executed tenancy agreement, which guided the Tribunal in determining the dispute. He added that the law requires that whoever alleges must prove. He submitted that the Tribunal ordered the reopening of



the premises vide the order issued on 16/2/2023 which was complied with and she was put back into the premises a fact which she confirmed to the court.

10. He averred that the same order directed the appellant to pay rent but she did not comply leading the Tribunal to apply the law of equity and grant him vacant possession of the premises at the end of the trial. He submitted that the appellant did not discharge the burden of proof to the required standard and that she had not specifically cited any error of law or fact by the Tribunal to warrant an appeal. The court was urged to dismiss the appeal with costs.
11. The appellant's main complaint is that the Tribunal erred in dismissing her application and that it failed to consider her evidence. The court record shows that the appellant did not produce any documents in support of her case. Further, that on 16/5/2023, the Tribunal directed that she file Mpesa statements on or before 19/5/2023, which she failed to do. She did not adduce any evidence to prove that the respondent had taken Kshs. 50,000/= from the shop or that he carted away her beer stock.
12. On the other hand, the respondent produced a tenancy agreement, which the appellant executed, his Mpesa statements showing the payments the appellant made and the months when she failed to pay rent; which the appellant did not controvert through evidence. In the absence of evidence to rebut the Respondent's evidence of non-payment of rent, the Tribunal cannot be faulted for concluding that the appellant was in rent arrears and that she breached the tenancy agreement. No such evidence was presented before this court.
13. This court is not persuaded that the appellant has established any plausible reason to warrant this court's interference with the decision of the Tribunal. The appeal is dismissed. The Respondent is awarded the costs of the appeal.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF SEPTEMBER 2025.

K. BOR

JUDGE

In the presence of: -

No appearance for the Appellant and Respondent

