



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiage v Mwangi (Environment and Land Appeal E056 of 2021)  
[2023] KEELC 20707 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20707 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E056 OF 2021  
MD MWANGI, J  
OCTOBER 12, 2023**

**BETWEEN**

**HASSAN KIAGE ..... APPELLANT**

**AND**

**DANIEL MUTISYA MWANGI ..... RESPONDENT**

**JUDGMENT**

**Background**

1. Before me is an appeal from the Judgment of the Rent Restriction Tribunal in case No. 252 of 2017 delivered on 9<sup>th</sup> July, 2021. The Appellant was the Defendant/Land Lord in the matter. He has raised 7 grounds of appeal in his Memorandum of Appeal dated 2<sup>nd</sup> August, 2021. Key amongst them being that the Tribunal did not have the jurisdiction to handle the matter since the monthly rent payable in respect of the premises, the subject matter of the case was Kshs 5,500 per month.
2. The Tenant had initiated the suit before the Tribunal in February, 2017 seeking for an order compelling the Defendants to release and deliver his household goods allegedly confiscated by the Defendant. In the alternative, the Tenant sought compensation for the said goods at the sum of Kshs 309,000.00 together with costs of the suit.
3. The Appellant who had been sued together with his caretaker filed a Statement of Defence and Counter-Claim. He denied the Tenant's claim in its entirety and also filed a Counter-Claim seeking the sum of Kshs 33,000.00 being rent arrears for six (6) months.
4. In its judgment of 9<sup>th</sup> July, 2021, the Tribunal found in favour of the Plaintiff and entered judgment against the Defendant for the sum of Kshs 80,000.00 with costs. The Tribunal further dismissed the Appellant's Counter-Claim with costs.



## Directions:

5. Upon confirming the filing of the Record of Appeal, the Court directed that the appeal be canvassed by way of written submissions. The Appellant filed his submissions accordingly. The Respondent despite service confirmed by the affidavit of service filed by the Respondent/Appellant did not file any submissions. The Court has had the opportunity to read the submissions by the Appellant.

## Analysis and Determination

6. The issue of the “jurisdiction of the Tribunal” prominently stands out in the Appellant’s Memorandum of Appeal and Submissions. The Appellant submits that under Section 2 of the [Rent Restriction Act](#), Cap 296, Laws of Kenya, the jurisdiction of the Rent Restriction Tribunal is limited to dwelling houses, other than:
  - a. Excepted dwelling houses;
  - b. Dwelling houses let on service tenancies;
  - c. dwelling houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.
7. It is the Appellant’s submissions that in the instant case, the rent was Kshs 5,500.00 per month. There was no dispute on the rent payable between the parties. This means that the premises did not fall within the jurisdiction of the Tribunal.
8. Where a Court or Tribunal lacks jurisdiction, it has no power to make one more step. As pronounced in the well-known case of *Owners of Motor Vessel ‘Lilian S’ vs. Caltex Oil Kenya Limited* [1989] eKLR, making reference to “words and phrases” Legally Defined – vol:1-N P. 113

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the Statute Charter or Commission under which the Court is Constituted, and may be extended or restricted by like means”.
9. The Court went further to state that,

“where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”.
10. The Supreme Court of Kenya upheld the above position in the case of [Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 others](#) [2012] eKLR when it held that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of Law can only exercise jurisdiction as conferred by the Constitution or other written Law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by Law.”
11. From the foregoing, it is clear that the Rent Restriction Tribunal arrogated itself jurisdiction exceeding that which is conferred upon it by Section 2 of the [Rent Restriction Act](#). Its decision therefore, however well-reasoned amounts to nothing. It is a nullity.
12. On that reason alone, I allow the appeal against the judgment of the Tribunal. The Judgment of the Rent Restriction Tribunal delivered on 9<sup>th</sup> July, 2021 and all consequential orders thereof is hereby set



aside, and substituted with an order striking out the Respondent's Tribunal Case No. 252 of 2017 for want of jurisdiction. Interestingly, the Appellant had filed a Counter-Claim in the same suit seeking a sum of Kshs 33,000.00 against the Plaintiff/Tenant. The same is not sustainable for similar reasons of want of jurisdiction. It is struck out as well.

13. Consequently, as both the main suit and the Counter-Claim have been struck out for want of jurisdiction, each party shall bear its own costs. The same order shall apply to this appeal. Each party shall bear its own costs.

It is so ordered.

**JUDGMENT DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF OCTOBER, 2023.**

**M. D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Kinyua for the Appellant

No appearance for the Respondent

Yvette: Court Assistant

**M. D. MWANGI**

**JUDGE**

