



REPUBLIC OF KENYA



KENYA LAW
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Njiru v Njiru (Civil Appeal E049 of 2024) [2025] KEHC 6614 (KLR) (21 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E049 OF 2024**

RM MWONGO, J

MAY 21, 2025

BETWEEN

ISAACK NJAGI NJIRU APPELLANT

AND

MICHAEL NJIRU RESPONDENT

*(Appeal arising from the decision of Hon. J.A. Otieno in Embu
CMCC No. E173 of 2021 delivered on 11th October 2023)*

JUDGMENT

The Appeal

1. By a memorandum of appeal dated 22nd May 2024, the appellant seeks for the following orders:
 1. That this Appeal be allowed;
 2. That the judgment of the trial court be set aside and be substituted with an order allowing the appellant's claim against the respondent or in the alternative, the court orders a retrial before a different magistrate; and
 3. That this court does award costs of the appeal and the trial court to the appellant.
2. The appeal is premised on the grounds that:
 1. The Learned Magistrate erred in law and fact by misapprehending the law and evidence adduced in the suit and concluding that there was a controlled tenancy between the appellant and the respondent under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301;
 2. The Learned Magistrate erred in law and misdirected herself in failing to consider that once the tenant vacates the premises, the Landlord and tenant relationship ceases to exist and that the landlord and the Business Premises Rent Tribunal ceases to have jurisdiction to determine



the issues where a tenant has vacated premises and the aggrieved party has recourse only in a regular civil court;

3. The Learned Magistrate erred in law and fact when she failed to deduce from the pleadings and evidence that the appellant was claiming from the respondent unpaid arrears of rent after the respondent had vacated the appellant's premises and that his was outside the jurisdiction of the Business Premises Rent Tribunal;
4. The Learned Magistrate erred in law and fact by finding the appellant's suit incompetent having been filed before a court devoid of jurisdiction and the misapprehension subsequently failed to consider and grant the reliefs sought by the appellant; and
5. The Learned Magistrate erred in law and fact by striking out the appellant's suit in the misconstrued belief that she had no jurisdiction to hear and determine the suit.

Background

3. The appellant filed a plaint dated 25th October 2021 seeking judgment against the respondent for a sum of Kshs.115,700/= and costs. It was his claim that the respondent was his tenant who has since vacated the premises in question without paying rent accruing in the sum prayed. He stated that the respondent had rented the premises where he was operating a bar for an annual rent of Kshs.10,000/= . However, while the rent was accruing, the respondent secretly vacated the premises without settling the amount due.
4. In his statement of defense, the respondent denied the averments made by the plaintiff and stated that the bar was closed during the COVID 19 pandemic following a government directive. That when he vacated the premises, he only owed the appellant Kshs.25,000/= in rent arrears for January, February and half of March 2020. That during this period when the rent remained unpaid, he had been hospitalized, thus, was unable to raise the rent money. It was the respondent's claim that the appellant initiated proceedings before the Business Premises Rent Tribunal (BPRT) claiming Kshs.80,000/= before sending him a demand letter for the amount stated in the plaint.
5. The sum prayed for the plaint was noted by the court as having reduced by Kshs.25,000/= since the respondent admitted owing the appellant as much. During the hearing, the appellant stated that he only claimed for Kshs.90,700/= from the respondent. He testified as PW1, adopting his witness statement whose contents are identical to the averments made in the plaint.
6. He added that the respondent moved into the premises in November 2018 and was inconsistent in his rent payments. He occupied the premises until 2020 when he vacated. In his defense, the respondent testified ad DW1, adopting his statement whose contents are similar to those contained in the statement of defense. He stated that the appellant ought only to have claimed for the arrears of Kshs.25,000/= which has since been settled.
7. In its judgment, the trial court found itself lacking jurisdiction to determine the suit which arises from a tenancy agreement that created a controlled tenancy under section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301. That the suit should lie before the BPRT. The suit was struck out on that basis.

Written Submissions

8. The court directed that the appeal be disposed of by way of written submissions. However, only the appellant complied and filed his submissions. In them, he stated that the respondent had already vacated the suit premises thus the jurisdiction of the BPRT was exhausted. That he was right in moving



to the civil court for recourse. That his claim for rent and the pending water bill was within the court's jurisdiction and the trial court ought to have determined the issue.

Issue for Determination

9. The issue for determination is whether the court has jurisdiction to determine the appeal.

Analysis

10. It is trite that a court has to be clothed with relevant jurisdiction before embarking on a matter. This was held in the case of Owners of The Motor Vessel "Lillian S v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), thus:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

11. Here, the appellant has called upon this court to find that the trial court erred in finding itself lacking jurisdiction to determine the suit before it. The crux of the matter is that the parties were in a tenancy agreement which appeared to have been terminated as at the point of filing the suit. The court took evidence but at the time of judgment, it found that it lacked jurisdiction to determine the suit which should have been placed before the BPRT.
12. Sections 14 and 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* provide for mechanisms of enforcing the tribunal's orders and appealing from the same. These mechanisms are limited to a competent subordinate court and appeals are filed in the Environment and Land Court (ELC). It means, therefore, that the appeal herein ought to be in the ELC. That is to say, issues of whether or not the suit in the trial court should have been placed before the BPRT should have been challenged at the ELC and not before the High Court.

Conclusions and Disposition

13. The subject matter of the suit herein is the existence or non-existence of a lease or rent agreement between the parties during a period coinciding with covid. Leases relate to the question of “use and occupation of land” matters which under Article 162 (2) (b) of the *Constitution* are matters for the Environment and Land Court.
14. Accordingly, this Court has no jurisdiction in the matter, and the appeal is hereby struck out for want of jurisdiction.
15. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 21ST DAY OF MAY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Githinji for Applicant.



2. Michael Njiru, Respondent in person

3. Francis Munyao - Court Assistant

