



**East African Institute of Certified Studies Limited v Mayfair Holdings Limited
(Civil Appeal E201 of 2024) [2025] KEHC 8749 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E201 OF 2024**

A MABEYA, J

JUNE 20, 2025

BETWEEN

**EAST AFRICAN INSTITUTE OF CERTIFIED STUDIES
LIMITED APPELLANT**

AND

MAYFAIR HOLDINGS LIMITED RESPONDENT

*(Being an appeal from the ruling and orders of Hon. E.A. Obina PM delivered
on the 3/10/2024 in the Kisumu Chief Magistrate's Case No. E442 of 2021,
Mayfair Holdings Limited v East African Institute of Certified Studies Limited)*

JUDGMENT

1. Vide his Motion on Notice dated 11/5/2024 before the lower court, the appellant moved the court seeking a refund of Kshs. 1,510,930/- from the respondent being the amount owing following the execution of the decree the court had given on the 11/5/2023 and which had subsequently been set aside vide High Court Appeal No. E066 of 2023.
2. The respondent opposed the said Motion vide its replying affidavit sworn on the 14/06/2024. It contended that following the High Court judgment, the appellant had been paid Kshs. 504,996/- and that the amount due to the appellant was Kshs. 995,004/-. That the issue of rent deposit of Kshs. 990,000/- was not before the court and thus the appellant ought to have made the claim in a separate suit.
3. In its ruling delivered on the 3/10/2024, the trial court dismissed the appellant's application. It held that the landlord was justified in retaining the deposit so as to wipe out his loss as a result of the Covid 19 pandemic and further that the issue of rent was not an issue before it as it was a separate issue all together. As regards the auctioneer's charges, the trial court held that the appellant was the author of its own misfortune having failed to settle the amount due in time.



4. Being dissatisfied with the said order, the appellant lodged this appeal vide the Memorandum of Appeal dated 9/10//2024 and raised three (3) grounds of appeal as follows: -
 - a. The learned senior principal magistrate was wrong and erred in finding that the appellant could not recover the rent deposit paid by the appellant to the respondent on account of an event of force majeure namely, Covid 19 pandemic, when the said rent deposit of Kshs. 990,930 was paid before the Covid 19 pandemic had set in and could not be an event that would have prevented the respondent from refunding the said rent deposit to the appellant.
 - b. The learned senior principal magistrate erred and was wrong in holding that the issue of rent deposit was not an issue in the said suit when in his judgment given on 11th May 2023, he had awarded to the respondent a sum of Kshs. 3,031,501 less any rent deposit paid by the appellant to the respondent prompting the appellant to make an application dated 20th June 2023 on which the learned magistrate had made an order reducing the judgement sum to Kshs. 2,040,571.
 - c. The learned magistrate erred and was wrong in failing to determine that a sum of Kshs. 520,000 paid by the appellant to M/S Victoria Blue Auctioneers was as a result of execution of the judgement given in Kisumu CMCC No. E442 of 2021 and the appellant having succeeded and had the judgement set aside in Kisumu High Court Civil Appeal E066 of 2023 was entitled to restitution of that sum from the respondent.
5. The appeal was disposed of by written submissions. The appellant submitted that it was asking for a refund of rent deposit paid at the commencement of the tenancy before the Covid 19 pandemic occurred thus the Pandemic was not an act which could have prevented the claim for a refund of the deposit being made.
6. That the issue of rent deposit was an issue that was dealt with by the court below and was thus a proper issue to raise as money for a refund by the respondent. That as regards the monies paid to the Auctioneers, once the decree had been set aside and it had been shown that money had been paid to the auctioneers, it was only logical that the money be refunded to him.
7. On its part, the respondent submitted that if the appellant had a claim for rent deposit then the same should have been in a separate suit which they would have been able to defend and the fact that the trial magistrate commented about it did not amount to a counter claim to the suit it filed in the lower court.
8. It was further submitted that there was no order made that the respondent should refund the auctioneer's fees paid but rather that each party ought to bear its own costs.
9. This being a first appeal, the Court is duty bound to evaluate the evidence before the court below afresh and come to its own independent findings and conclusions. See *Selles & Anor vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123.
10. The respondent had sued the appellant seeking rental arrears of Kshs. 3,031,501/-. Judgment for the same was entered in its favour vide the trial court's judgment of 11/5/2023.
11. The appellant appealed against that judgment in Civil Appeal No. E066 of 2023 whereby the entire judgment and decree was set aside. The Court substituted the same with an order dismissing the respondent's suit against the appellant. The court further ordered both parties to bear their own costs both below and before it.
12. Based on that judgment, the appellant applied to the trail court for refund of a total sum of Kshs. 2,611,930/-. It contended that the said amount was made up of Kshs. 1,000,000/- paid to the



respondent's advocates, Kshs. 520,000/- paid to Victoria Blue Auctioneers and Kshs.990,930/- being the rental deposit for the premises. The said amount had been knocked off from the earlier decretal sum of Kshs. 3, 031,501/-. It contended that the original judgment having been set aside, it was entitled to the refund of the said amount.

13. On its part the respondent deposed that following the judgment in Civil Appeal E066 of 2023, it had paid the appellant Kshs. 504,996/-, that the amount paid to the auctioneer was on account of the appellant's own dereliction of his obligations
14. In its ruling of 3/10/2024, the trial court dismissed the application in its entirety. It held that the amount paid to the auctioneer was as a result of the appellant's failure to carry out its obligations. That the respondent was entitled to hold on to the rental deposit of Kshs. 990,930/- to wipe out its tears from the Covid 19 pandemic.
15. Firstly, there was nothing like wiping of tears. The pandemic hit both the appellant and the respondent alike. If it was an issue of wiping tears, both parties had tears to be wiped. With the holding in the CA. No. E066 of 2023, the loss had to fall where it laid. Both parties were to hold onto their tears equally.
16. In the decree of 14/8/2023, in calculating the amount due to the respondent by the appellant in rental arrears, the court took into account the rental deposit of Kshs. 990,930/- and thereby deducted the same from the total rental arrears of Kshs. 3,031,501/-. In this regard, the said amount was factored in calculating the amount due to the respondent. It was an issue which had been dealt with by the trial court. It was therefore erroneous for the court below to hold that the same was not an issue before it and that the appellant should have brought a separate suit for the same.
17. As regards the other claims, with the setting aside of the entire judgment of the trial court, any and all monies paid by the appellant pursuant to that decree were recoverable. Further, the Court having ordered that each party do bear own costs, the monies paid to the auctioneers by the appellant pursuant to that decree were recoverable.
18. Accordingly, I find that the appeal has merit and I allow the same. The ruling of 4/10/2024 is hereby set aside and replaced with an order allowing the application as prayed.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

