



**South Nyanza Teachers Savings & Credit Co-operative Society Ltd v Maseno University
(Civil Appeal E105 of 2021) [2024] KEHC 2237 (KLR) (6 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E105 OF 2021**

KW KIARIE, J

MARCH 6, 2024

BETWEEN

**SOUTH NYANZA TEACHERS SAVINGS & CREDIT CO-OPERATIVE
SOCIETY LTD APPELLANT**

AND

MASENO UNIVERSITY RESPONDENT

*(Being an Appeal from the judgment and decree in Homa Bay Chief Magistrate's
CMCC No.56 of 2017 by Hon. T. Obutu–Senior Principal Magistrate)*

JUDGMENT

1. South Nyanza Teachers Savings & Credit Co-operative Society Ltd, the appellant herein, was the defendant in Homa Bay Chief Magistrate's CMCC No. 56 of 2017. The respondent had sued for a declaration that the distress for rent arrears, attachment, and notification of sale was illegal and for an order of permanent injunction against the appellant or their agents from attaching the respondent's property without following due process. They also sought general damages and the costs of the suit.
2. On March 17th 2021, the learned trial delivered judgment in favour of the respondent.
3. The appellant was aggrieved by the judgment and filed this appeal. The firm of Aluoch Odera & Nyauke Advocates represented them. The following grounds of appeal were raised:
 - a. That honourable subordinate court lacked the jurisdiction to deal with the matter.
 - b. The honourable subordinate court thus misdirected itself on matters of law and facts.
 - c. The honourable subordinate court failed to appreciate that, as of 30 July 2017, a landlord-tenant relationship was controlled within the law's meaning.



4. The firm of Owiti, Otieno, and Ragot Advocates represented the respondent. They opposed the appeal.
5. As the first appellate court, it is my responsibility to carefully review all of the evidence presented and consider that I did not have the opportunity to observe the witnesses testify and their demeanour. I will follow the principles outlined in the *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, which states that the first appellate court must examine and assess the evidence presented in the trial court and then come to its conclusions.
6. One of the grounds of appeal was that the trial court did not have jurisdiction to hear and determine the matter that gave rise to this appeal. The law is clear that where the court lacks jurisdiction, it provides judgment and orders in vain. The Court of Appeal for Eastern Africa in *Salim vs Shariff Mohamed Shary* [1938] KLR 9 stated:

If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders, however precisely certain and technically correct, are made nullities and not only voidable, they are void and may not only be set aside at any time by the court in which they are rendered but be declared void by every court in which they may be presented. It is well established that jurisdiction cannot be conferred on a court by consent of parties, and any waiver on their part cannot make up for the lack or deficit of jurisdiction.

7. The appellant did not indicate why they contended that the trial Court lacked jurisdiction. It would appear that this issue was abandoned. Their submissions framed three issues, and jurisdiction was not one of them. I will equally not address my mind to it.
8. One issue that the appellant wanted this court to address was whether there was a tenancy relationship between the parties.
9. Conversely, the respondent contended that two lease agreements were the subject of this case. The first lease agreement, it was contended, was to last for six years, commencing on the 1st day of March 2010 and lapsing in February 2016. The second lease was to begin on the 1st day of September 2011 and last until the 28th day of February 2016.
10. When the leases expire and are not renewed, the possession and payment of rent create a tenancy from month to month. In *WJ Blakeman Ltd vs Associated Hotel Management Services Ltd* [1985] eKLR, Nyarangi remarked as follows:

I agree. In *Souza Figueiredo & Co Ltd v Moorings Hotel Co Ltd* [1960] 926, by an agreement the respondent let premises to the appellant for a term exceeding three years under the sub-lease, registration of the agreement was refused, the appellant took possession of the premises, and it was later contended that the unregistered agreement was ineffectual to create any estate or interest and the contract to pay rent was unenforceable. It was held that whereas the agreement could not operate as a lease, it could operate as an agreement inter parties which, if followed by possession and payment of rent, creates a tenancy from month to month: See also *Rogan – Kamper v Lord Grosvenor (No 2)* 1977 KLR 123 and *EA Power & Lighting Co Ltd v The Attorney General* [1978] KLR 217. The decision in *Mlay v Phoneas* [1969] 563

The relationship between the two parties herein was a tenancy from month to month.



11. the tenant was expected to pay monthly in such a relationship. When the rent distress was levied, there was unpaid rent. It was immoral for the respondent to contend that they were not entitled because they lacked a written contract.
12. The distress for rent was, therefore, lawful. Consequently, I set aside the judgment by the trial court and all the consequential orders. The appeal is allowed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 6TH DAY OF MARCH 2024

KIARIE WAWERU KIARIE

JUDGE

