



**Nzioka v Shecodily Enterprises (Environment and Land Appeal  
E079 of 2024) [2025] KEELC 4862 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4862 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E079 OF 2024**

**JG KEMEI, J  
JUNE 30, 2025**

**BETWEEN**

**VERONICA NZILANI NZIOKA ..... APPELLANT**

**AND**

**SHECODILY ENTERPRISES ..... RESPONDENT**

**JUDGMENT**

1. Aggrieved by the Ruling of the Tribunal in BPRT No E255 of 2023 delivered on the 19/3//24 the Appellant moved the Court of Appeal dated the 10/6/24 based on the following grounds;
  - a. The learned Chairperson erred in law and fact in upholding the Preliminary Objection yet it did not raise any questions or issues of law but rather factual of law but rather factual issues being whether the premises was commercial or residential.
  - b. The learned Chairperson erred in law and fact in failing to consider the inspection report conducted by their inspector namely Susan Akinyi which found the premises to have been a business premises.
  - c. The learned Chairperson did not consider or interrogate any evidence that depicted whether the premises was a business premise or a residential premise.
  - d. The learned Chairperson erred in law by allowing the Respondent's Preliminary Objection despite there being no evidence to substantiate their claims before the Tribunal with regards to the Appellant's sickness and alleged lodging activities.
  - e. The learned Chairperson erred in fact in failing to recognize that the Appellant had carried out her business at the premises for two years undisturbed by the Respondent.



- f. The learned Chairperson erred in fact and law by endorsing the Respondent's Preliminary Objection despite the Appellant's evidence that the premises were illegally closed by the Respondent.
  - g. The learned Chairperson failed to recognize that there were other business being run in the area such as hotels where the Appellant was carrying out her business.
  - h. The learned Chairperson erred in fact by failing to consider that the Appellant's business was being conducted at Kayaba village and she was a small-scale trader hence she did not need business license.
  - i. The learned Chairperson erred in fact by failing to consider that the Appellant's goods were destroyed when the Respondent gained access to the premises.
  - j. The learned Chairperson did not consider any of the substantive evidence such as the bank statement placed before him with regards to the applications filed by the appellant.
  - k. The learned Chairperson failed to scrutinize the inspection report to determine whether the Respondent acknowledged that the premises was actually being used for business and not residential despite the Respondent having a representative.
2. The Appellant sought the following orders;
    - a. The Ruling and order of Hon Gakuhi Chege issued on the 19/3/24 be set aside.
    - b. The application dated the 7/3/23 and 23/2/23 be allowed
    - c. The costs of the appeal be borne by the Respondent.
  3. On the 5/5/25 the parties elected to canvass the appeal by way of written submissions. The court directed the parties to file their submissions by close of business on the 5/6/25.
  4. Counsel for the Appellant submitted and framed 3 issues for determination; whether the learned Chairperson erred in law and fact in upholding the respondents, in failing to consider or interrogate the report conducted by the court; consider whether the premises was a business or rental premise.
  5. Relying on the celebrated case of Mukisa Biscuit Manufacturing Limited –vs- West End Distributors (1969) EA 696 the learned Counsel submitted that the Preliminary Objection was based on disputed facts premised on whether or not the premises were business or residential, hence it was not a pure point of law as contemplated by the Mukisa definition because matters of fact oust the application from the ambit of a Preliminary Objection.
  6. Further Learned Counsel argued that according to the report of the BPRT Inspector Ms. Susan A. Oywa dated the 9/5/23, the findings were that the premises looked more of a business premise than a residential one and in her opinion the premises were not habitable for either business or residential purposes until major renovations were put in place. That had the Tribunal considered the report it would not have reached the erroneous decision it made to the effect that the premises were residential and hence had no jurisdiction. The report did not confirm that the premises were residential and the Tribunal therefore erred in concluding as such.
  7. Counsel further submitted that from the report the major contention was whether the premises were residential or commercial. The legal burden fell on the Appellant to proof that the premises were for commercial use and not residential, which evidence was not interrogated by the Tribunal.



8. Counsel for the Respondent submitted that the Tribunal rightly found that it lacked jurisdiction to entertain the reference as the premises were residential in nature and thus outside the scope of the Land Lord and Tenant (Shops Hotel and Catering Establishment) Act Cap 301. That the Appellant has filed the appeal to delay the compliance with the lawful monetary order of the Tribunal in the sum of Kshs 25,000/- in damages and another Kshs 10,000/- awarded in ELC Misc. No 086 of 2024. Counsel argued that the Act that created the Tribunal applies exclusively to controlled business premises. There was no lease nor license and no factual foundation showing the premises were used for business. The Appellant therefore cannot simply declare the premises to be business in nature in order to invoke the Tribunal's jurisdiction. Such conduct is a classical distortion of judicial process.
9. Having considered the appeal, the submissions and the record, the key issue for determination is whether the preliminary objection was a pure point of law. If in the affirmative, whether the Preliminary Objection was merited.
10. On what constitutes a Preliminary Objection, in the case of Hassan Ali Joho & Another -Vs- Suleiman Said Shabal & 2 others Supreme Court of Kenya Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukhisa Biscuit Manufacturers Ltd vs West End Distributors Ltd (1969) E.A where the Court of Appeal said that:
 

“...a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact needs to be ascertained or if what is sought is the exercise of judicial discretion.”
11. The effect of a preliminary objection if upheld, renders any further proceedings before the Court impossible or unnecessary. Thus, a preliminary objection may only be raised on a “pure question of law”. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.
12. The court finds that to the extent that the objection is premised on jurisdiction, it is a pure point of law.
13. The Supreme Court in Petition No. 7 of 2013 Mary Wambui Munene Vs. Peter Gichuki Kingara and Six Others, [2014] eKLR stated that ‘jurisdiction is a pure question of law’ and should be resolved on priority basis. Accordingly, jurisdiction goes to the root of a matter and as such it is a pure point of law. In the case of celebrated case of Owners of the Motor Vessel Lillian S –vs- Caltex Oil Kenya Limited (1989) KLR 1 where it was stated 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
14. In the case of Jamal Salim –v- Yusuf Abdulahi Abdi & another Civil Appeal No. 103 of 2016 [2018] eKLR the Court of Appeal stated:
 

‘Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. In the case of Adero & Another –v- Ulinzi Sacco Society Limited [2002] 1 KLR 577, the Court stated as follows;

  1. ....
  2. The jurisdiction either exists or does not ab initio ...



3. Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
  4. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.
15. The jurisdiction of the Tribunal is found in Section 12 of the Act include but not limited to;
- a. to determine whether or not any tenancy is a controlled tenancy;
  - b. to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
16. The background of the appeal is that the Appellant rented the premises belonging to the Respondent for purposes of residential purposes. That later she abandoned the premises on the grounds that she was taken ill and was unable to reside therein. According to her, the Respondent locked up the premises on the ground that they had been abandoned. According to the report commissioned by the Tribunal, the premises appeared to have been abandoned. It was difficult to state with certainty whether the premises were residential or commercial given that they were in dire need of repair. To the extent that the court needed to look at the report and any other evidence to determine the objection, I find and hold that on that basis alone the Preliminary Objection was ousted from being a pure point of law.
17. Consequently, the appeal succeeds and I enter judgement as follows;
- a. The Ruling and order of Hon Gakuhi Chege issued on the 19/3/24 be set aside.
  - b. The application dated the 7/3/23 and 23/2/23 be allowed.
  - c. The costs of the appeal be borne by the Respondent.
18. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the Presence of:

1. Ms. Mwangi HB for Mr. Turunga
2. NA for the Respondent
3. CA- Ms. Yvette Njoroge

