



**Sasia v Gumo & 6 others (Environment and Land Appeal
1 of 2024) [2025] KEELC 4807 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4807 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL 1 OF 2024**

**CK NZILI, J
JUNE 25, 2025**

BETWEEN

ALWIN SASIA APPELLANT

AND

MARGARET S. GUMO 1ST RESPONDENT

PAMELA NASOMBI 2ND RESPONDENT

HEZRON KIPLAGAT 3RD RESPONDENT

ELLY ODERO 4TH RESPONDENT

ISAIAH NDUNGU 5TH RESPONDENT

FLORENCE OBUYA 6TH RESPONDENT

EZEKIEL KHATILI 7TH RESPONDENT

*(Being an Appeal from the Ruling and Orders of Hon. A. Muma, a Member of
the Business Premises Rent Tribunal read on 8/12/2023 in Eldoret BPRT Case
No. E032 Consolidated with E033, E034, E035, E036, E037 and E109 of 2023)*

JUDGMENT

1. What is before the court is a Memorandum of Appeal dated 29/1/2024. The appellant, who was the tenant at the Tribunal in a consolidated case brought by the 2nd - 7th respondents, who were subtenants, against the 1st respondent, as the landlady faults the Tribunal for:
 - (I) Finding that the lease between the appellant and the 1st undisputed for 5 years and two months, instead of five years and thereafter became controlled.
 - (2) Finding the tenancy was out of the ambits of a controlled tenancy.



- (3) Failing to find that after the lease expired on 31/5/2020, it became a month to month tenancy, since the 1st respondent continued receiving rent as the appellant remained in occupation.
 - (4) Holding that the letter of 12/10/2020, which was not in statutory form was or amounted to a notice to vacate the rented premises.
 - (5) Not appreciating that there was no evidence of the service of the alleged notice to vacate, otherwise the address used did not belong to the appellant.
 - (6) Holding that she was a stranger to the landlord and the subtenants.
 - (7) Ignoring the evidence of her continued occupation after the expiry of the lease.
 - (8) Not finding that she had been enjoined in the suit on 23/6/2023 as the head tenant.
 - (9) Not appreciating that the 1st respondent had never complained of non-payment of rent or taken any action in that regard.
 - (10) Finding that she was not a tenant, and had no interest in the property, to be joined in the suit.
 - (11) For ruling against the weight of the evidence tendered.
2. The role of an appellate court of the first instance is to reconsider the evidence, evaluate it and draw its own conclusion bearing in mind that it has neither seen nor heard the witnesses testify. Further, the court should rule on the evidence on record without introducing extraneous matters not dwelt with by the parties in evidence. See Kenya Ports Authority -vs- Kuston (Kenya) Limited, (2009) 2EA 212.
 3. The order appealed against is the one dated 8/12/2023. It arose out of application dated 17/2/2023 brought by the 2nd - 7th respondents, pursuant to consolidated references dated 16/2/2023, brought under Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Cap 301. The complaints were with reference to business premises standing on part of LR No. 2116/20/1V, converted to Kitale Municipality Block 4/326. The applicants described themselves as subtenants a controlled tenancy subsisting since 2015, where the 1st respondent had threatened to evict them for non-payment of rent, yet they had been paying the same to the appellant.
 4. In the notice of motion, the 2nd - 6th respondents had sought for a temporary injunction restraining the 1st respondent from evicting, harassing, closing down or in any manner interfering with the running of their businesses or the premises. The 2nd - 7th respondents had sworn affidavits confirming occupation of shops Nos. 1, 1B, 2, 6, 7, 8, 16, 12 and 25. The 2nd - 7th respondents had also attached letters and notices dated 4/1/2023 and 23/1/2023, regarding change of ownership. Further, the 2nd - 7th respondents had attached copies of letters dated 9/1/2023 and 25/1/2023 from the appellant's lawyers in response to the letter of change of ownership and on the payment of rent to the new owners, insisting that she was the head-tenant, hence the subsisting tenancies could not be affected by the change of ownership of the suit land.
 5. The 1st respondent opposed the application through a replying affidavit sworn on 3/4/2023. The 1st respondent deposed that she was the widow of the late Pius Magero Gumo and hence a beneficial owner of the suit land. She admitted that there was a lease agreement with the appellant with effect from 1/6/2015 to 31/7/2020, which upon expiry, was not extended though the appellant continued in possession of the suit property until a notice to vacate dated 12/10/2020 was issued, as per an attached copy marked MSG-1. Therefore, the 1st respondent denied any existence of a sublease or the 2nd - 7th respondents being her sub-tenants. The 1st respondent deposed that the 2nd - 7th respondents should be receiving instructions from her, making rent payments and clearing all the outstanding rent to her



- account as per the letter dated 10/3/2023 attached as MSG-2. The 1st respondent termed the failure to pay rent by the 2nd – 7th respondents as a fundamental breach and a violation of the temporary court orders issued on 23/2/2023.
6. The record of appeal shows that by an application dated 9/6/2023, the appellant sought to join the reference as a party, variation of the order dated 8/5/2023 that with effect from June, 2023, rent be paid directly to the 1st respondent by the 2nd - 7th respondents and for the landlady to furnish a bank standing order for rents to be paid by the 2nd - 7th respondents therein. The application was supported by two affidavits of the appellant sworn on 15/5/2023 and 9/6/2023. He deposed that he was the head tenant as per a letter dated 2/12/2022, attached as AS-1, written by the 1st respondent. The appellant termed the tenancy as a controlled one for after 31/5/2023, she remained in possession of the property with the 2nd - 7th respondents being the sub-tenants who had been paying rent to him and not the 1st respondent.
 7. Further, the appellant deposed that he was the one who had developed the suit property and had been dutifully paying rent to the 1st respondent as per cheques attached as 2(a) – (j), otherwise, since there was a subsisting controlled tenancy, eviction of the 2nd - 7th respondents had to follow the due process of law. The appellant averred that he was leased the suit premises when it was vacant, developed and or constructed the commercial building standing on the land, and sublet it to the sub-tenants on the understanding that he would recoup his investment costs from the rent collectable from the sub-tenants, which has never been an issue between him and the 1st respondent over the period 2015 - 2022. The appellant attached the letters dated 4/1/2023, 10/3/2023 and the response dated 23/1/2023 as annexures marked AS-2, 3, 5, and 6, respectively. The appellant deposed that he had paid rent for January to June 2023, by a bankers cheque, a forwarding letter and an affidavit of service attached as AS-6(a) and (b).
 8. The 1st respondent filed a further affidavit sworn on 24/7/2023. She deposed that following Kitale High Court Succession Cause No. 350 of 1998, she was directed to liquidate LR No. 2116/20/1V and distribute it to its beneficiaries as per the annexed confirmed grant and ruling annexed as MS-9(1) and (2), following which the suit property was advertised and a prospective purchaser signed a sale agreement on 28/7/2022. It was deposed that when the appellant got wind of the same, he wrote a letter dated 1/9/2022, demanding Kshs.19,000,000/=, which was responded to by a letter dated 2/12/2022, attached as MS-9(3) and (4). The 1st respondent deposed that the appellant also wrote a letter dated 9/1/2023, seeking for the recall of the notification of change of ownership to the 2nd - 7th respondents, attached as MS-9(5) and MS-9(6).
 9. Accordingly, the 1st respondent deposes that the purchasers got concerned of the attempts by the appellant but informed them that the said issue could not affect the transaction or hand over of vacant possession as per a letter marked MSG-6 and 7. The 1st respondent deposed that that by a letter dated 2/12/2022, the appellant was informed that the lease agreement did not confer to him any form of ownership and that there was a separate agreement allowing such development as per annexure marked MSG-8. The 1st respondent deposes that on 23/3/2023, the purchasers' advocates informed her that the reference before the court was interfering with the completion of the purchase as per a copy marked MSG-9. The 1st respondent deposed that it is clear that the appellant was out to frustrate the sale agreement through blackmail, yet there are in place orders of liquidation at the High Court, with an unfounded claim to unjustly enrich himself, on a non-existent claim of Kshs. 19,000,000/=, or tenancy agreement.
 10. Further, the 1st respondent denied that the appellant was her appointed agent to receive any rental income from the 2nd - 7th respondents. The 1st respondent deposed that if the appellant had a claim on



development, he was in the wrong court or forum. The 1st respondent urged the tribunal to dismiss the application for joinder dated 9/6/2023.

11. In a further affidavit sworn on 25/4/2023, the appellant deposed that after 31/5/2020, the tenancy with the 1st respondent became month to month and was subsisting, since rent continued being received by the 1st respondent upto September 2023. The appellant deposed that he was the one who developed the suit property, until fire gutted the structure that used to exist there, hence was entitled to recoup his investment costs, valued at Kshs. 18,560,000/=, which arrangements could not be departed by the succession court. The appellant further deposed that the sub-tenants are entitled to the protection of the law, while to order that they continue paying rent to the landlady, would interfere with his sub-tenancy and that of the 2nd - 7th respondents.
12. From the proceedings appearing on pages 228 – 242, it appears that several orders were made on 22/2/2023, 6/4/2023, 18/5/2023, 13/6/2023, 27/7/2023, 1/9/2023 and on 2/10/2023. None of the said orders were appealed against by the appellant. The 2nd - 7th respondents have filed a notice dated 3/3/2025, expressing their intention not to participate in this appeal. The notice does not state whether they support or oppose the appeal.
13. The appellant relies on written submissions dated 15/4/2025. It is submitted that the existing tenancy fits a controlled tenancy as per Section 2(1) of Cap 301, hence, the finding of the Tribunal at paragraph 20 of the judgment was erroneous, for not basing the same on the evidence tendered and submissions at pages 4(a), 112-113 and 120 of the record of appeal. The appellant submitted that remaining on the rented premises after 31/5/2020, the acceptance and receipt of rent thereafter created a tenancy relationship. Reliance was placed on Kenya Commercial Bank (K) Ltd -vs- Lawrence Ngunikio Simitu & Another [2021] eKLR.
14. Subsequently, the appellant submitted that the letter dated 12/12/2020 could not amount to a statutory notice to vacate the suit premises and for it was sent to a wrong address, it could not amount to a valid notice. The appellant submitted the finding that the appellant was a stranger to the proceedings was erroneous based on its fault, finding that there was no controlled tenancy yet by proceeding of 13/6/2023, he had already been admitted as a head tenant in the proceedings, hence the reason that he was allowed to respond to and file supplementary submissions, going by page 230 of the record of appeal. The appellant submits that the question of joinder was not therefore available for determination in the final judgment in view of the order dated 13/6/2023, otherwise, it was an error for the Tribunal to reverse such an order.
15. Through written submissions dated 27/3/2025, the 1st respondent submitted that the lease was for a fixed term exceeding 5 years and therefore not within the definition of a controlled tenancy, an issue which the appellant did not dispute or tender evidence to challenge. On whether the tenancy became a month to month tenancy after the lease expired, the 1st respondent submitted that for such a tenancy to exist and be legal valid, no contrary notice or action should be taken by the landlord, to terminate the continued occupation. That despite the respondent receipt of the rent, a periodic lease was not automatically created. Relying on Nyamboke & another -vs- Ondieki (2024) KEELC 5790 (KLR), it was also submitted that the appellant's claim is unfounded for ignoring the respondents termination notice.
16. Equally, the 1st respondent submitted that the appellants lease had expired on 31/7/2020 and had no valid tenancy at he time of the proceedings at the Tribunal and his role as head tenant had no bearing. She relied on Order 1 Rule 10(2) of the Civil Procedure Rules, Nyaboke (supra), Muruatetu & another -vs- Republic; Kenya National Commission on Human Rights & 2others 2016] KESC 12 (KLR) and



Republic -vs- Kwale County Lands Registrar & another; Zalo & 2 others (Intended Interested Party) [2022] KEELC 13757 (KLR).

17. Regarding whether the Tribunal erred in directing that the rent be paid to the 1st respondent, it is submitted that rent is paid to the landlord unless a valid subletting agreement exists. That the appellant had no legal capacity to collect rent. The 1st respondent also submitted that the notice issued on 12/10/2020 was valid since statutory notice requirements were not applicable to the case. The 1st respondent also submitted that the said notice was duly served on the appellant since no evidence was offered to the contrary.
18. Further, the 1st respondent submitted that the appellants continued occupation of the suit premises post the expiry of the lease was unauthorized and unlawful and no documents were tendered in evidence to validate the tenancy. Again, the 1st respondent submitted that despite the fact that the 1st respondent did not raise rent disputes, the appellant still had no valid tenancy agreement.
19. The court has carefully perused the pleadings before the Tribunal, evidence tendered by way of affidavits, grounds of appeal and written submissions. The issues calling for my determination are:
 1. Whether the appellant disclosed an interest to be joined as a party to the proceedings before the Tribunal.
 - (2) If there existed a tenancy relationship between the appellant and the 1st respondent separately and between himself and the 2nd – 7th respondent as his sub-tenants.
 - (3) If the appellant has any defence or triable issue raised against the reference by the 2nd – 7th respondents.
 - (4) If the Tribunal considered all the relevant evidentiary material in arriving at its decision.
 - (5) If the Tribunal had jurisdiction to entertain the claim by the appellant.
 - (6) If the appeal has merits.
20. It is trite law that parties are bound by their pleadings and the issues for the courts determination flow from the pleadings. See *Mwinyihaji -vs- Mwebeyu & Another* 2025 KECA 858 [KLR]. In *Emuria -vs- Sambu & Others* Civil Appeal 63 of 2017 [2025] KECA 1033 [KLR] (5th June 2025) (Judgment), the court cited *JTG Enterprises Limited -vs- China Gezhoubu Group & another (Civil Appeal (Application) E707 of 2023)* [2024] KECA 596 (KLR) (24 May 2024) (Ruling), that the proper drafting of pleadings is so paramount that it goes to the kernel of administration of justice that drafting pleading painstakingly could lead to its actual success or failure.
21. A party is bound by his pleadings and any evidence produced by the parties which is not supportive of, or is at variance with the pleadings must be disregarded. See *Independent Electoral and Boundaries Commission & another -vs- Stephen Mutinda Mule* [2014] eKLR. What was before the Tribunal were the references under Form (Rule-5) dated 16/2/2023, brought in accordance with the provision of Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act. The reference was supported by affidavits of the 2nd - 7th respondents sworn on 17/2/2023 and prompted by notices dated 4/1/2023 and 23/1/2023, from the 1st respondent, following a change of ownership of LR No. 2116/20/1V, from the estate of Pius Magero Gumo to Ebby Ingaroh Ambwere and Francisca Aburu Ambwere, with effect from 1/1/2023.
22. The 1st respondent replied to the references and the application for interim orders by a replying affidavit sworn on 3/4/2023, insisting that after a notice to vacate was issued to the appellant dated 12/10/2020



- annexed as MSA-11, there was no longer any tenancy in existence, hence the 2nd - 7th respondents became her tenants, who should abide by her instructions and also the court orders to pay rent to her.
23. From the court record, there is no evidence that the appellant came on record by way of notice of appointment of advocates defining the capacity that he intended to join the reference, before filing the application dated 8/6/2023, to be joined as a party/tenant to the proceedings. Except prayers No. 3 and 4 of the application dated 9/6/2023, the appellant did not seek any substantive reliefs to be allowed to respond to the references and or offer any defence or support the references. The draft defence or support as the case could be, was not attached to the supporting affidavit.
 24. Equally, and more importantly, the appellant, from the court record, was being represented by the same law firm on record for the 2nd - 7th respondents. It is clear that there was apparent conflict of interest, which logically puts the counsel on record before the court at a cross-roads, to urge the appeal as pleaded, where the appellant and his law firm had not come on record before the Tribunal. The filing of the application dated 9/6/2023 did not give the appellant and his advocates audience before the Tribunal without regularizing the capacity of the counsel on board. I say this because, the primary pleadings in a reference are statutory in nature. The firm of M/S Kiarie & Co. Advocates in the references dated 16/2/2023 described itself as advocates and agents for the sub-tenants, who are the 2nd - 7th respondents herein. At no time did the law firm file a notice of appointment to represent any tenant by the name of the appellant. Equally, at no time did the appellant file a notice of appointment of the law firm of M/S Kiarie & Co. Advocates, to represent him at the Tribunal or to oppose the references.
 25. The 2nd - 7th respondents averred that they were sub-tenants of the appellant in a controlled tenancy, who had constructed the leased premises and was the one receiving the rents. The 2nd - 7th respondents averred that the 1st respondent as the landlady had threatened to evict them and had directed that they be paying rent to the purchasers of the suit land, with effect from 1/1/2023. In other word the 2nd - 7th respondents admitted in their pleadings receipt of notices dated 4/1/2023 and 23/1/2023. Equally, the 2nd - 7th respondents attached copies of correspondences written by their advocates on record, on behalf of the appellant dated 9/1/2023 and 25/1/2023. This is where I find the conflict of interest coming in and where the appellant's advocates have urged the court in the grounds of appeal and in their written submissions to interpret the import of the letters, with regard to whether the appellant was a head-tenant or not.
 26. Jurisdiction is everything and without it a Tribunal has to down its tools. See *Motor Vessel Lillian 'S' -vs- Caltex Oil (K) Ltd* [1989] KLR. The jurisdiction of the Tribunal is circumscribed by law. The Tribunal does not have jurisdiction to do anything not spelt out by Section 12 of the Act. See *Amos Keireri Kanyugo -vs- Kireithi Trust* [2017] eKLR, *Moses N. Gitonga & Another -vs- George Gathara Kunjaga & Another* [2014] eKLR. Section 2 of the Act defines a controlled tenancy. In *Narshidas & Co. Ltd -vs- Nyali Air Conditions & Refrigeration Service Ltd* Civil Appeal No. 205 of 1995, the court held that a controlled tenant confronted with an illegal threat of forceful eviction cannot go to the Tribunal, for it has no jurisdiction to issue an injunction or similar remedy against the landlord. See also *Caledonia Supermarket Ltd -vs- Kenya National Examination Council* (20130 eKLR, *Tiwi Beach Hotel Ltd. -vs- Juliane Ulrike Stamm* [1990] 2 KAR 189 and *Michael Gachie Mwarangu -vs- Peter Gichuru Maina & Others* [2016] eKLR.
 27. In *John Mugo Nganga -vs- Margaret M. Mwangi* [2014] eKLR, the court cited *Rent Restriction Tribunal -vs- Raval Exparte Mayfair Bakeries Ltd* [1985] KUR 167, that a Tribunal has jurisdiction on matters related to a tenant or landlord and where an interested party was a tenant although a statutory tenant, it matters not if the complaint is in tort or equity or otherwise, the criteria is that a complaint must relate to the tenancy.



28. In this appeal, the cause of action as pleaded by the 2nd - 7th respondents and the 1st respondent, relate to a notice issued that the suit premises no longer vested with the 1st respondent having been sold or changed ownership to the new owners. The 2nd - 7th respondents sought the Tribunal to declare them as enjoying a controlled tenancy with the appellant and who should not be subjected to pay rent to a stranger in the name of having bought the property or be evicted from or the 1st respondent to in any way to interfere with their businesses. In the supporting affidavit at paragraph 5, the 2nd - 7th respondents admit that Margaret S. Gumo was the landlady receiving rent from the appellant and who had issued the notices on change of ownership. There was no single letter to vacate the premises that had been issued to the appellant, describing him as a head-tenant or a tenant for that matter. It is the appellant in the letters dated 9/1/2023 and 25/1/2023 who assumed and described himself as a head tenant. The letters alluded to a court order on valuation of the property and negotiation on the developments to the tune of Kshs. 18,500,000/=.
29. The appellant had requested for the recall of the letter dated 4/1/2023, fearing that it would open him up to causes of action by the tenants. In the letter dated 25/1/2023, the appellant had written to the 2nd - 7th respondents telling them that they were not tenants of the 1st respondent or Oliver Gumo, but his sub-tenants since 2016, who could only get instructions from him or his agent. He made it clear that the change of ownership could not affect their subsisting tenants, hence they should ignore the letter dated 4/1/2023.
30. It is trite law that parties are bound by their pleadings. Jurisdiction can also not be conferred by consent of parties. As indicated above, the appellant from the pleadings did not seek to have the issue of joinder determined as a preliminary issue so that he could be joined formally to the proceedings. The appellant had not filed a cross-reference or a separate reference. The issues raised by the appellant in his letters and correspondences and his affidavits touched on matters of breach of agreements to develop the land and or to recoup his investment from its income. The appellant was neither a landlord or head-tenant duly authorized by the 1st appellant after his own tenancy expired on 31/5/2020.
31. A cause of action is defined as an act on the part of the defendant that gives rise to a reason to complain to the plaintiff. See *D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR). The cause of action as defined by the 2nd - 7th respondents and the 1st respondent's pleadings, relate to the legal effect or termination of a tenancy out of change of ownership, leading to the notices dated 4/1/2023.
32. In *Sapra Studio -vs- Kenya National Properties Ltd* [1985] eKLR, the court observed that any lease must have a certain beginning and a certain ending. Further, the court observed that whether the identity or character of the premises had changed or not, would lead to a result in law. In *Joseph Kaloki t/a Royal Family Assembly -vs- Nancy Atieno Ouma* [2020] KECA 831 (KLR), the court found no basis of continuing in occupation of the properties beyond the agreed term of the tenancy especially where the relationship between the parties had terminated by effluxion of time.
33. The appellant submits that he had a right to continue, as a head-tenant which is protected in law. There is no dispute that the suit property was subject to succession proceedings and had been ordered by the High Court, to be distributed among the beneficiaries of the estate of the owner. The appellant is not one of the beneficiaries to the estate. There is no evidence that he had lodged a claim as a third party or a creditor to the estate on account of an alleged investment to the tune of Kshs.18,500,000/=. The appellant had not pleaded and produced any subleases or sub-tenancies with the 2nd - 7th respondents, duly consented to or approved by the 1st respondent, to form a basis of an existing legal tenancy relationship with the respondents.



34. Termination of tenancies is governed by Section 4(2) Cap 301. The 2nd - 7th respondents had not attacked the notices on account of fundamental defects in form or procedural defects; as held in *Kasarani Investments Holding Ltd -vs- KBL* [2017] eKLR. What the 2nd - 7th respondents had been served with was not a notice to vacate but a notification on change of ownership so that they could regularize tenancies with the new owners, by forwarding the rent to the defined bank account.
35. In *Abdukrazak Khalifa Salim -vs- Harun Rashid Khator & Others* [2018] KECA 151 [KLR], the court cited *Galaxy Paints Co. Ltd -vs- Falcon Guards Ltd* EALA [2000] 2 EA 385, that a court can only pronounce judgment on issues arising from the pleadings. There is evidence that the 2nd - 7th respondents were the ones on the suit premises at the issuance of the notice by the 1st respondent. Existence of a tenancy relationship is a prerequisite to the application of Cap 302. Where such a relationship does not exist or has come to an end or has been brought to an end, the Act does not apply. See *Pritam -vs- Ratilal & Another* [1972] EA 560.
36. What the appellant was alleging, even if he had brought a cross-reference was not a controlled tenancy. The issues of investments and the recovery of the same through sub-tenancy does not fall under a definition of a controlled tenant. Sections 9 and 12(1) of the Act cannot be interpreted in a manner to include the claim by the appellant as held in *Mayfair Bakeries Ltd* (supra) and in *Re Hebtulla Properties Ltd* [1979] KLR 91.
37. Collecting rent on behalf of the 1st respondent for onward transmission did not per se grant the appellant the title or power of a head-tenant. Developing the suit premises did not equally bring the appellant to the definition of a tenant or the head, tenant in line with Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* or the provisions of Sections 2, 54 and 56 of the *Land Registration Act*.
38. In the premises, I find the appeal lacking merits. It is dismissed with costs.
39. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF JUNE 2025.

In the presence of:

Court Assistant – Dennis

Miss Masai for Kiarie for appellant present

Miss Kodo for the 1st respondent

2nd – 7th respondents absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

