



**Mahida v Prajapati (Environment and Land Appeal E009 of 2024)
[2025] KEELC 4601 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E009 OF 2024**

**A NYUKURI, J
JUNE 18, 2025**

BETWEEN

ASHOK KUMAR MAHIDA APPELLANT

AND

NARENDRA PRAJAPATI RESPONDENT

JUDGMENT

1. This appeal filed by Ashok Kumar Mahida challenges the ruling of the Honorable Chairman of the Rent Restriction Tribunal delivered on 23rd February 2024 in Kakamega RRT Case No. E033 of 2023. In the impugned ruling, the learned Chairman found that the appellant herein had no capacity to file the suit before him and that the Tribunal had no jurisdiction to determine the dispute.

Background

2. Vide an undated plaint filed in Kakamega RRT Case No. E033 of 203, the plaintiff (appellant herein) stated that the defendant (respondent herein) was a tenant on his premises situated in Kakamega town paying a monthly rent of Kshs. 17,000/- but that he was in arrears of Kshs. 153,000/- for the months from July 2022 to March 2023. That he had been unsuccessful in recovering the rent. He sought the following orders:
 - a. Rent arrears of Kshs. 187,000/-
 - b. Vacant possession of the premises
 - c. Costs of the suit be provided
 - d. Mesne profits
 - e. Any other relief the court deems fit to grant



3. In a defence and counterclaim dated 20th April 2023, the defendant denied the plaintiff's claim and pointed out that the plaintiff had failed to state the Plot No., type and purpose of premises whether residential or business upon which his complaint is anchored. He further stated that the Tribunal had no jurisdiction.
4. The defendant stated that he will raise a preliminary objection on a point of law seeking that the plaintiff's suit be struck out with costs for failing to disclose any reasonable cause of action.
5. The defendant stated that he was a tenant occupying residential premises on land parcel Nos. Kakamega/Municipality Block 2/226, 2/225, 2/227 and 2/138 located in Kakamega town paying a monthly rent of Kshs. 17,000/- to Bank Account No. 0410****01 at Diamond Trust Bank Kakamega Branch, in the name of the late Ranchhodsinh Fulsinh Mahda as ordered vide court order of 2nd June 2021 in Nairobi HC Succession Cause No. 345 of 2020. He maintained that he had paid and was paying all rent due and had no rent arrears as alleged or at all.
6. He further averred that the premises rented by him belong to the deceased person being the late Ranchhodsinh Fulsinh Mahda and that the plaintiff was not an administrator of the deceased person hence he had no locus standi to file this claim against the defendant. He stated that the tribunal had jurisdiction to determine his counterclaim. He sought the following orders in his counterclaim:
 - a. A declaration that the plaintiff/tenant is harassing the defendant/tenant and the plaintiff/landlord's claim is illegal.
 - b. A declaration that the tenant is not entitled to rent in view of the court order in Nairobi HC Succ. 345 of 2020.
 - c. A permanent injunction against the plaintiff/landlord, his agents and or any other person acting on behalf of the plaintiff/landlord restraining them jointly and or severally from evicting, harassing the tenant, demanding rent from the defendant/tenant and or interfering in any manner whatsoever with the defendant/tenant's use and occupation of the defendant/tenant's residential premises on plot numbers Kakamega /Municipality /Block 2/226,2/225, 2/227 and 2/138.
 - d. Costs.
7. The plaintiff filed a reply to defence and counterclaim dated 2nd October, 2023 denying the defendant's allegations and alleged that the counterclaim was overtaken by events as the defendant had since vacated the plaintiff's premises. Parties were directed to file submissions in regard to the Preliminary Objection raised in the defence and counterclaim that the plaintiff had no capacity to file suit and that the court had no jurisdiction to hear and determine the matter. Parties filed submissions and on consideration of the same, the learned Chairman of the Tribunal in his ruling of 23rd February 2024 upheld the Preliminary Objection and found that the plaintiff had no capacity to file the claim and that the Tribunal lacked jurisdiction the dispute.
8. Aggrieved with the ruling of 23rd February 2024, the appellant herein appealed against the same vide his Memorandum of Appeal dated 28th February 2024 citing the following four grounds of appeal:
 - a. That the learned Chairman of the Tribunal erred in fact and law by considering irrelevant and extraneous factors in rendering a ruling on the preliminary objection raised by the respondent.
 - b. That the learned Chairman of the Tribunal erred in law and fact by failing to consider the appellant's submissions on the preliminary objection.



- c. That the learned Chairman erred in law and fact by holding the appellant to a higher standard of proof than is required in civil cases.
 - d. That the learned Chairman grossly misdirected himself in law and fact by failing to have regard to the weight of evidence tendered by the appellant in upholding the preliminary objection.
9. Consequently, the appellant sought the following orders:
- a. That the ruling delivered on 23rd February 2024 be set aside and the Preliminary Objection be dismissed.
 - b. That costs of the appeal be awarded.
10. The appeal was canvassed by way of written submissions. On record are the appellant's submissions dated 28th October 2024 and the respondent's submissions dated 9th September 2024.

Appellant's submissions.

11. Counsel for the appellant submitted that the evidence filed by the plaintiff between pages 28 to 39 of the record demonstrated that parcel No. Kakamega/Municipality Block/2/227 was duly transferred to the appellant's deceased father Mr. Ranchhodsinh Fulsinh Mahidh to his sons all of whom jointly own the plot upon which the suit premises are situated.
12. Counsel further submitted that the title of the suit property was duly registered in the appellant's names subject to payment of relevant fees. Counsel maintained that outgoings of the plot were personally paid by the appellant as shown at page 38 of the Record of Appeal because the appellant paid land rent and rates up to 2023 which confirmed that the appellant was registered over thereof.
13. The court was referred to Section 26 of the *Land Registration Act* and the decision in the case of Daykio Plantations Limited v National Bank of Kenya Ltd & 2 others (2019) eKLR for the proposition that since the appellant was the lawful registered owner of the suit property, he had the locus standi to institute the suit against the respondent and that any person claiming to have proprietary interest in property must demonstrate such claim by evidence.
14. Regarding the question of the jurisdiction of the Rent Restriction Tribunal to hear and determine the reference, counsel submitted that since the appellant obtained Certificate of lease in 2020 before the suit was filed in the Tribunal, the appellant properly sued the respondent in his capacity as owner of the suit property. They argued that the succession proceedings in Nairobi Succession Cause No. 34 of 2020 had no bearing on the proceedings before the Tribunal because at the time of filing suit the appellant was the registered proprietor of the plot where the rented premises are situated. Counsel argued that there is a Court order dated 28th July, 2021 to show that the appellant had locus to sue the respondent.
15. Counsel maintained that the law governing tenant-landlord relationship was the basis of the dispute herein and hence the Tribunal erroneously found that it lacked jurisdiction to hear and determine the dispute. Counsel faulted the Tribunal's finding arguing that had the Chairman applied his mind to the fact that the appellant was the registered proprietor, he would have dismissed the frivolous preliminary objection.
16. On whether the respondent is a tenant on residential premises on Kakamega/ Municipality Block 2/226, 2/225, 2/227 and 2/138, counsel argued that the respondent had been making monthly payments as rent save for the defaulted months and hence it was clear that there existed tenant-landlord relationship between that parties which tenancy dispute being in writing expired on 31st December,



2020. Further that the evidence shows that the respondent was in illegal occupation of the premises which prompted the prayers sought in the plaint.

Respondent's submissions.

17. In supporting the findings of the Tribunal, counsel for the respondent submitted that what was raised by the respondent was a preliminary objection as described in the case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Limited* (1969) EA 696. Counsel argued that from the pleadings, the respondent was in occupation of Kakamega/ Municipality Block/2/226, 2/225, 2/227 and 2/138 and was paying monthly rent of Kshs. 16,000/- into account 0410*****01 at Diamond Trust Bank pursuant to the order of the court dated 02.06.2021 in Nairobi HC Succession Cause No. 345 of 2020, where the appellant is a protestor. According to Counsel, the role of the appellant as per the orders of 08.07.2021 was to obtain Bank Statements where rent is deposited; obtain deposit slips from tenants for reconciliation purposes; has no authority to withdraw the cash from those accounts and furnish counsel on record with statements of reconciliation. Counsel argued that the preliminary objection was merited because there are no orders in the succession cause allowing the appellant to file suit and that he was not the administrator of the deceased.
18. In regard to the standard of proof, it was submitted for the respondent that the Tribunal did not delve into evidence and argued that it was trite that a matter should not proceed to hearing before a preliminary objection is heard first and that preliminary objections are based in law and not facts. The court was referred to the case of *CMC Aviation Ltd v Cruisair Ltd Bo.* 1978 KLR 103(1976-80) | KLR 835 to buttress their argument.
19. Regarding jurisdiction, counsel argued that there was already Nairobi HC Succession Cause No. 345 of 2020 where the property where the rented premises are situated is subject to the proceedings and that the same have not been concluded and the court ordered the respondent to deposit rent in a bank account at Diamond Trust Bank. That the order of 02.06.2021 served on the tenants has not been varied or set aside and the appellant has no grant for the deceased owner's estate and that it would be against the interest of justice to issue contrary orders.
20. On costs, it was submitted for the respondent that costs follow events and that the respondent should be awarded costs of the appeal and the suit before the tribunal.

Analysis and determination

21. The court has carefully considered the appeal, rival submissions filed by the parties and the entire record. This court takes cognizance of its role as a first appellate court being to independently reconsider and reassess the record and the findings of the court below and decide whether the conclusions reached by the trial court should stand; giving reasons either way. In this appeal, the issue that arise for the court's determination is whether the Tribunal was right in dismissing the appellant's claim on the basis that it had no jurisdiction and that the appellant lacked capacity to file the claim against the respondent.
22. A preliminary objection is a pure point of law raised where facts are not disputed. A preliminary objection was described in the case of *Mukisa Biscuits Limited vs West End Distributors* [1969] E.A 696 as follows;

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of



the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

23. In the case of *Oraro vs Mbaja* [2005] KLR 141, the court held as follows;

“Anything that purports to be a preliminary objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence.”

24. Essentially therefore, for a preliminary objection to be deemed to be valid, it must raise pure points of law and be anchored on facts that are not in dispute.

25. In the instant matter, the respondent raised two grounds upon which he argued his preliminary objection. He raised the questions of whether the Tribunal had jurisdiction to grant prayers sought in the plaint and whether the appellant had capacity to bring suit in view of the fact that he was not the personal representative of the estate of the late Ranchhodsinh Fulsinh Mahda. Having considered the facts of this case, it is my view that the questions of jurisdiction and capacity raised before the Tribunal were predicated on undisputed facts and therefore, I find and hold that the preliminary objection raised by the respondent before the Tribunal was on a pure point of law and therefore a valid and proper preliminary objection.

26. Jurisdiction is everything and before a court or Tribunal embarks on determining a dispute it must first be satisfied that it has the requisite jurisdiction. Where a court or Tribunal finds that it has no jurisdiction it should down its tools. Jurisdiction emanates from the Constitution, statute or judicial pronouncements and a court cannot arrogate itself the jurisdiction it does not have. In the case of *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others* (2012) e KLR, the Supreme Court of Kenya held as follows;

A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

27. In the case of *Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Limited* [1989] KLR 1, the court stated as follows;

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.

28. The jurisdiction of the Rent Restriction Tribunal is provided for in section 5 of the Rent Restriction Act as follows;

Powers of court

1. The tribunal shall have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in particular shall have power—

- (a) To assess the standard rent of any premises either on the application of any person interested or of its own motion;
- (b) To fix in the case of any premises, at its discretion and in accordance with the requirements of justice, the date from which the standard rent is payable;
- (c) To apportion—



- i. Payment of the rent of premises among tenants sharing the occupation thereof;
- (ii) the rent payable in respect of different premises included in one composite tenancy;
- (d) Where the rent chargeable in respect of any premises includes a payment for water, light, conservancy, sweeper, watchman, or other service charge in addition to the standard rent, to fix the amount of such payment or service charge;
- (e) Where any premises are occupied by tenants who enjoy services in common, such as water, light, conservancy, sweeper or watchman, to apportion such charges to each of the tenants;
- (f) Subject to the provisions of section 14, to make either or both of the following orders —
 - i. An order for the recovery of possession of premises whether in the occupation of a tenant or of any other person; and
 - (ii) an order for the recovery of arrears of rent, mesne profits and service charges;
- (g) For the purpose of enabling additional buildings to be erected, to make orders permitting landlords (subject to the provisions of any written law) to excise vacant land out of premises where such a course is, in the opinion of the tribunal, desirable in the public interest;
- (h) Where the landlord fails to carry out any repairs for which he is liable, to order the landlord to carry out such repairs within such time as the tribunal may stipulate, and, if the landlord fails to comply with the order, and upon application by notice of motion by the tenant, to authorize the tenant to execute the repairs and to deduct the cost thereof from the rent;
 - a. To permit the levy of distress for rent;
 - b. To impose conditions in any order made by the tribunal under the provisions of this section;
 - c. On the application by a tenant by notice of motion, to reduce the standard or recoverable rent of premises where the tribunal is satisfied that the landlord has failed to carry out such repairs to, or maintenance of, the premises as he has a duty to carry out either by agreement or under this Act;
 - d. To order a refund of any sum paid by a tenant on account of rent, being a sum irrecoverable by the landlord under this Act:

Provided that no application may be made under this paragraph after a period of two years from the date of payment of the sum sought to be refunded, or, in the case of more than one payment, from the date of last payment;
 - e. At any time, of its own motion, or for good cause shown on an application by any landlord or tenant, to reopen any proceedings in which it has given any decision, determined any question, or made any order, and to revoke, vary



or amend such decision, determination or order, other than an order for the recovery of possession of premises or for the ejection of a tenant therefrom which has been executed:

Provided that—

- a. Nothing in this paragraph shall prejudice or affect the right of any person under section 8 to appeal from any such decision, determination or order, or from the revocation, variation or amendment of any such decision, determination or order;
 - (ii) the powers conferred on the tribunal by this paragraph shall not be exercised in respect of any decision, determination or order while an appeal therefrom is pending or in a manner inconsistent with or repugnant to the decision of the appellate tribunal on such an appeal;
 - f. At any time, of its own motion, or for good cause shown on an application by any landlord or tenant, adjourn an application, or stay or suspend execution of any order of the tribunal, or postpone the date of possession, for such period or periods and subject to such conditions with regard to payment by the tenant of arrears of rent or otherwise as the tribunal thinks fit.
29. Therefore, the Rent Restriction Tribunal has jurisdiction to determine inter alia questions concerning determination of rent, mesne profits, service charge and other related charges payable, repairs of rented premises, recovery of possession of premises, levy of distress for rent and related matters; where there exists tenant-landlord relationship in regard to dwelling houses.
30. In the instant case, the appellant stated that the respondent was a tenant in his premises situated in Kakamega town paying a monthly rent of Kshs. 17, 000/= and that the respondent was in arrears of Kshs. 187, 000/= for the months between July 2022 and March 2023. He sought for payment of rent arrears and mesne profits as well as vacant possession and costs of the suit. On the other hand, the respondent observed that the appellant failed to disclose the registration number of the land upon which the rented premises are situated, as well as the nature and purpose of the premises whether residential or business. The respondent denied there being a landlord-tenant relationship between him and the appellant. He maintained that he occupied residential premises on land parcel Nos. Kakamega Municipality/Block 2/226, 2/225, 2/227 and or 2/138 whereof he paid monthly rent of Kshs. 16, 000/= into account No. 0410xxxx01 at Diamond Trust Bank, Kakamega Branch in the name of the late Ranchhodsinh Fulsinh Mahda, the owner of the premises, pursuant to a court order issued on 2nd June 2021, in Nairobi High Court Succession Cause No. 345 of 2020.
31. The respondent's preliminary objection to the suit before the Tribunal was that the rented premises belonged to the late Ranchhodsinh Fulsinh Mahda and that the appellant was not the administrator of the deceased's estate hence he had no capacity to file the suit in the Tribunal. In addition, the respondent argued that the Tribunal had no jurisdiction to hear and determine the matter in view of the decision dated 2nd June 2021 in Nairobi HCC Succession Cause No. 345 of 2020.
32. While the appellant did not disclose the registered number of the premises alleged to have been rented to the respondent and when he entered into a tenant- landlord relationship, he argued that the evidence filed on record showed that he was the registered owner of parcel No. Kakamega Municipality Block



II/227 as his late father transferred the same to him on 28th December 2016 and that he was issued with certificate of lease on 5th June 2020. According to the appellant, a lease agreement with the respondent (whereof the identity of the landlord in the said lease is not disclosed) expired on 31st December 2020 and that thereafter, the respondent's occupation was illegal and without consent of the appellant/landlord.

33. From the position taken by the appellant and the respondent it is clear that none of the parties herein allege to have entered into a tenancy agreement with the other. The respondent was categorical that there was no tenant-landlord relationship between the parties herein. It is clear to me that the appellant's claim for rent arrears, mesne profits and vacant possession is based on his assertion that he is the registered proprietor of parcel No. Kakamega Municipality Block II/ 227 which is part of the rented premises. A landlord-tenant relationship is a relationship created by agreement. There must be consensus between the parties that they have intention to be in such a relationship, but there can be no presumption of such relationship on the basis that the rented premises have changed hands.
34. From the facts of this case, it is clear that the appellant presumed the existence of landlord-tenant relationship between him and the respondent merely on the basis of the alleged change of registration/ownership of one of the parcels of land whereon the rented premises are situated.
35. In this case, there is no evidence that a tenant-landlord relationship was ever created between the parties herein or that parties' conduct implied the existence of such relationship. In addition, the facts show that at no time did the respondent ever pay rent to the respondent. The appellant himself maintains that the respondent's occupation of the rented premises is without his knowledge or consent.
36. Plainly, that the appellant's position regarding parcel No. Kakamega Municipality Block II/227 is two pronged; on one hand, a claim against the estate of the late Ranchhodsinh Fulsinh Mahda in so far as the identification of the assets of the deceased in Nairobi HC Succession Cause No. 345 of 2020 is concerned, his claim being that the said parcel is his and not the deceased's; and on the other hand, a claim predicated on section 26 of the *Land Registration Act* in assertion of his rights as the registered proprietor against the respondent who has no tenant- landlord relationship with him, but who is alleged to be on the said property without the authority, consent and knowledge of the appellant.
37. It is clear that the issues raised before the Tribunal were whether parcel No. Kakamega Municipality Block II/227 was part of the estate of the late Ranchhodsinh Fulsinh Mahda in view of the appellant's assertion that the same had been lawfully transferred to the appellant; and whether the parties herein having not entered into a tenant-landlord relationship, the Tribunal could have jurisdiction to determine the dispute anchored on ownership of the premises.
38. The appellant has not denied the facts that distribution of the estate of Ranchhodsinh Fulsinh Mahda including the suit property is the subject of Nairobi Succession Cause No. 345 of 2020; that in that suit, that the respondent and other tenants were on 2nd June 2021 ordered to deposit rent in the deceased's account at Diamond Trust Bank kakamega Branch; that the succession cause in Nairobi is still pending; that he is not the administrator of the estate of the deceased; that vide the Succession Court's order of 28th July 2021 his role was limited to obtaining bank statements and deposit slips from tenants in respect to the deceased's bank account, he but had no authority to withdraw and or access cash from the deceased's account. That being the case, the appellant's prayers before the Tribunal for payment of rent and mesne profits as well as grant of vacant possession of the premises could not be matters to be determined by the Tribunal as the Succession court in Nairobi was already ceased with those matters as they related to the identification and distribution of the estate of the late Ranchhodsinh Fulsinh Mahda.



39. Regarding the appellant's assertion that his rights under section 26 of the *Land Registration Act* ought to be protected because he was seeking redress against the respondent who is on his premises without his consent, it is my view that questions of the appellant's ownership of the said parcel of land in the context of section 26 of *Land Registration Act* in circumstances of this case where there is no tenant-landlord relationship, are matters regarding title to land which are within the jurisdiction of the Environment and Land Court as provided for in Article 162 (2) (b) of the *Constitution* as read with section 13 of the *Environment and Land Court Act* and not for the Rent Restriction Tribunal.
40. On capacity, section 82 of the *Law of Succession Act* empowers the personal representative of a deceased person to file suit on behalf of the estate and provides as follows;
- Powers of personal representatives
- Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—
- a. To enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
41. Therefore, where a plaintiff files suit in regard to the estate of a deceased person, they must first ensure that they are duly appointed personal representatives of the estate of such deceased person. In the instant matter, the appellant having not been the administrator of the deceased's estate, and in view of the orders of the High court at Nairobi in Succession Cause No. 345 of 2020 of 2nd June 2021 and 28th July 2021 directing the respondent and other tenants to deposit rent in the deceased's account and stopping the appellant from accessing the rent deposited, I find and hold that the appellant had no locus standi for all purposes and intents to file suit to receive rent which was adjudged as of 2nd June 2021 as belonging to the estate of the deceased. For those reasons, I am in agreement with the findings of the Rent Restriction Tribunal that it lacked jurisdiction to determine the dispute and that the appellant had no capacity to file the suit before the Tribunal.
42. In the premises, I find and hold that there is no merit in the appeal before me, which I hereby dismiss with costs to the respondent.
43. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 18TH DAY OF JUNE, 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Mulama for the appellant

Mr. Shaka holding brief for Mr. Mukavale J. for the respondent

Court Assistant: M. Nguyai

