



REPUBLIC OF KENYA



KENYA LAW
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**Abdille v Ndungu (Environment and Land Appeal E176 of 2024)
[2025] KEELC 4931 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4931 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E176 OF 2024**

TW MURIGI, J

JUNE 13, 2025

BETWEEN

HASSAN ABDILLE APPELLANT

AND

JOAN NJOKI NDUNGU RESPONDENT

RULING

1. This ruling is in respect of the Notice of Preliminary Objection dated 11th February 2025 raised by the Respondent on the following grounds: -
 - a. That arising from the ruling delivered by the Business Premises Rent Tribunal on 17th October 2024, the Appellant lost possession of the suit premises which are now occupied by the Respondent. That the Business Premises Rent Tribunal no longer has jurisdiction to grant any further orders in this matter irrespective of the outcome of the appeal.
 - b. That the orders sought in this appeal are not available to the Appellant. That in a claim for wrongful eviction, the Appellant is entitled to seek damages through a separate action in a civil court and not through this appeal.
2. From the foregoing, the Respondent contends that the Appeal has been overtaken by events and should be dismissed with costs.
3. The preliminary objection was canvassed by way of written submissions.

The Respondent's Submissions

4. The Respondent filed his submissions dated 25th February 2025.
5. On behalf of the Respondent, Counsel submitted that the only issue for determination is whether the Business Premises Rent Tribunal has jurisdiction to determine this matter. Counsel further submitted



that the Appeal is overtaken by events as the orders sought are not available to the Appellant and are incapable of being enforced against the Respondent.

6. Concluding his submissions, Counsel urged the court to uphold the preliminary objection and dismiss the appeal with costs.

The Appellant's Submissions

7. The Appellant filed his submissions dated 20th March 2025.
8. On behalf of the Appellant, Counsel submitted that the only issue for determination is whether the preliminary objection is merited.
9. Counsel submitted that the Respondent has not lost possession of the suit property since his sub-tenants are still in occupation of the stalls within the suit property. Counsel further submitted that the tribunal in its ruling acknowledged the existence of a controlled tenancy between the Appellant and the Respondent and thus an agent should only collect rent from the Appellant and not from his sub-tenants. Counsel argued that the Respondent is attempting to justify an illegality through the preliminary objection.
10. Counsel submitted that the Appellant is challenging the Tribunal's unilateral decision of appointing an estate agent to collect rent directly from his sub-tenants while no tenancy agreement exists between them and the Respondent. Counsel submitted that the Respondent's contention that the Appellant is no longer her tenant by virtue of the Tribunal's ruling is misleading as the tenancy between the parties herein was not terminated. Counsel further submitted that the Tribunal decision allowing the Respondent to appoint an estate agent to manage the rental premises necessitated the appeal herein.
11. It was submitted that the issues raised in the preliminary objection are issues of facts and falls short of the legal attributes of a preliminary objection as set out in the case of *Mukisa Biscuits Manufacturing Company Ltd v West END Distributors Ltd (1969) EA 696*.

Analysis And Determination

12. Having considered the preliminary objection and the rival submissions, the issue that arises for determination is whether the preliminary objection is merited.
 1. The law on preliminary objections is well settled. A preliminary objection must be on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd (1969) EA 696*, Law JA stated;

“So far as I'm aware, a preliminary objection consists of point of law which have been pleaded or which arises by clear implication out of 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.”

14. In *Oraro Vs Mbaja 2005 eKLR Ojwang J* (as he then was) described it as follows: -

“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual



aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

15. The Respondent contends that the Appeal is overtaken by events as the Appellant is no longer in possession of the suit premises. He further contended that there no longer exists a tenancy agreement between the parties herein and hence the orders sought are incapable of being enforced. The issue of whether the Appellant is in possession of the suit premises or whether there exists a tenancy agreement between the parties herein are issues of facts which must be ascertained. A preliminary objection cannot be raised on disputed facts.
16. In the end I find that the preliminary objection is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13th DAY OF JUNE 2025.

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HON. T. MURIGI
JUDGE

In the presence of: -

The absence of the parties

Court assistant – Ahmed

