



**Jawanga Investments Limited v Shah t/a Lewins; Adcom General Traders  
Ltd (Interested Party) (Environment and Land Appeal E040 of 2025)  
[2025] KEELC 6711 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6711 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E040 OF 2025  
JG KEMEI, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**JAWANGA INVESTMENTS LIMITED ..... APPELLANT**

**AND**

**SK SHAH T/A LEWINS ..... RESPONDENT**

**AND**

**ADCOM GENERAL TRADERS LTD ..... INTERESTED PARTY**

*(An appeal from the Ruling of the Hon James Ndegwa in the BPRT delivered on 1/3/24  
in BPRT No E096 Of 203 – Jawanga Investments Limited Vs S K Shah t/a Lewins)*

**JUDGMENT**

1. Vide a memorandum of appeal dated the 18/3/2024 the appellant proffered this appeal on the grounds and faulted the trial court for finding that serve by the process server was not effected, while acknowledging that the tenant's agent was served; the tenant did not cross-examine the process server to give his opinion on service; failing to rely on the Inspectors independent report which ought to have confirmed the occupancy and possession of the business premises despite the court having issued an order to that effect; failing to down its tools or power on vacation of the premises by the tenant and a new tenant having taken over possession of the new premises; acted ultra vires in finding that it had jurisdiction to hear the suit.
2. Consequently, the appellant sought the following orders;
  - a. That the appeal be allowed with the appellant awarded costs
  - b. The Hon Business premises Tribunals Order made on 1/3/24 be set aside, discharged and or varied in its entirety



- c. The Hon Tribunal be rendered to have lacked jurisdiction to entertain, hear, and determine the said matter, and the Preliminary Objection dated the 28/11/2023 by the Landlord be upheld.
  - d. Any other relief that the court may consider just and expedient.
3. On 30/6/25, parties elected to canvass the appeal by way of written submissions.
4. The appellant submitted that the Tribunal lacked jurisdiction to entertain the matter further because the respondent had vacated the premises on 14/11/2023, and that the Tribunal was wrong to dismiss the preliminary objection dated 28/11/23, unjustly.
5. On jurisdiction, the appellant argued that the relationship between the parties was that of landlord and tenant. The Tribunal issued orders on 10/3/23, for the tenant to vacate the premises and deliver vacant possession to the appellant. Following these orders, the OCS Central Police Station evicted the respondent on 10/11/23. The respondent was informed adequately in writing that the auctioneer had taken her goods, which were stored in a warehouse, and was advised to collect them. Although the court ordered on 29/11/23 that the status quo be maintained and that an inspection of the premises be conducted on 30/11/23, neither was carried out. As per the court's directions, the appellant was updated on the state of the premises, confirming that the respondent had vacated and that renovations were ongoing by the new tenant, the Interested party.
6. The appellant therefore contends that since the tenant had vacated the premises, there was no longer a landlord-tenant relationship, thereby removing the jurisdiction of the tribunal. The orders of the Tribunal directing the respondent back to the premises, along with the restoration of her goods, were therefore ultra vires the tribunal's powers. See the case of Owners of Motor Vehicle Vs Lilian S (1989) 1 KLR.
7. Furthermore, the appellant argued that the tribunal's jurisdiction is confined to a controlled tenancy, and since the tenant had vacated the premises, the tribunal's jurisdiction was consequently lost.
8. On the issue of jurisdiction, the respondent submitted that Section 2 of the Landlord and Tenant (Shops Hotels and catering Establishments) Act (LTA) donates power to the Tribunal to determine disputes relating to a controlled tenancy. That a controlled tenancy existed between the parties. Since the tenant has paid the rent for November to the Landlord, there is therefore no vacuum in the landlord tenancy relationship between the parties. Although the respondent may not have been in actual possession of the suit premises, she is entitled to the tenancy.
9. Furthermore, the appellant was criticized for evicting the respondent without an eviction order. The respondent contends that because the appellant did not hand over vacant possession of the premises and unlawfully ejected them, the tenancy remained valid. Consequently, the appellant lacked the capacity to enter into another landlord-tenant agreement with the interested party when an agreement already existed between the original parties. The alleged tenancy with the interested party, therefore, is invalid and void. The court was urged to dismiss the appeal to enable the parties to pursue the suit in the Tribunal to finality.
10. The interested party supports the appeal. It argued that it entered into a lease agreement with the appellant dated 13/11/13 after discovering the premises were vacant. It stated that the Respondent had been evicted from the premises through a valid court order, which the Officer Commanding Station, Central Police Station, Nairobi, duly executed. When the interested party took possession of the business premises, it was in vacant possession. At that time, no court order was in place preventing the applicant from renting it out. The order for the eviction of the appellant has not been challenged at all. Having been in possession of the demised premises for the last two years, it invested significantly



in renovations and would suffer loss if the court upholds the tribunal's orders for the respondent to be restored to the premises, despite the court orders evicting it.

11. Quoting the case *Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKL*R the Interested Party urged the court that the balance of convenience favours the interested party, given that it is an innocent party that the dispute between the applicant and the respondent has caught up.
12. Having considered the appeal, the written submissions and all the relevant material placed before me, the issues that fall for determination are as follows;
  - a. Whether the court had jurisdiction to determine the application.
  - b. Whether the respondent was properly served with the application and the court's orders issued on 3/10/23.
  - c. Whether an independent inspector's report was produced before the Tribunal and what the effect was.
13. This being a first appeal, this Court is expected to evaluate the evidence that was presented in the lower Court, while bearing in mind that it did not have the opportunity to see and hear witnesses.
14. The duty of an appellate court is stipulated under Section 78 of the *Civil Procedure Act* which states as follows;
  1. "Subject to such conditions and limitations as may be prescribed, an appellate court shall have power;
    - a. to determine a case finally;
    - b. to remand a case;
    - c. to frame issues and refer them for trial;
    - d. to take additional evidence or to require the evidence to be taken;
    - e. to order a new trial.
  - (2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein."
15. In the case of *Kapsiran Clan -vs- Kasagur Clan [2018] eKL*R the summarized the applicable principles as follows:
  - a. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - b. In reconsidering and re-evaluating the evidence, the first appellate Court must bear in mind and give due allowance to the fact that the trial Court had the advantage of seeing and hearing the witnesses testify before her; and
  - c. It is not open to the first appellate Court to review the findings of a trial Court simply because it would have reached different results if it were hearing the matter for the first time.
16. With these principles in mind, I will now analyse the appeal. I will reverse the order of the issues to address the first one last.



17. First, the background of the dispute between the parties. Land Reference No 209/525/20, also known as Alshons Building, is situated along Latema Road in the central business district of Nairobi County. Joseph Waweru Nganga owned this property, and upon his demise in 2016, his son, Charles Waweru, took over the property under the name Jawanga Investments Limited. SK Shah, who is currently over 80 years old, has occupied the property for about six decades, it was averred. She handed over the property to her brother, Mayur K. Shah, who was in occupation and running the business under a power of attorney from his sister. Although the power of attorney is mentioned in one of Mayur Shah's affidavits, it was not annexed to the record of appeal. It appears that this is not in dispute; therefore, I will leave it at that. Mayur averred that she left the business 12 years ago and that he is now the one running it. Mayur admitted that he has been dealing with Charles Waweru since the year 2011.
18. This matter has attracted a fair share of litigation. According to the trial court record, parties have litigated under BPRT No 680 of 2011 when the Tribunal increased the rent to Kshs 29,280/-; BPRT No E032 of 2021 where the said Charles sought termination of the tenancy to allow renovation of the building, which could not be done when the tenant was in possession. This suit was finally withdrawn on 25/8/2021 in the following terms:

“The proceedings herein have been compromised and overtaken by events. Tenant to pay Kshs 15,000/-“
19. What followed next was a lull of about 2 years before the appellant, on 21/6/23, issued a notice to terminate the tenancy or alter the terms of the tenancy, ostensibly for purposes of renovations.
20. On 15/9/23, the appellant filed a notice of motion seeking, inter alia, an order that the respondent vacate the suit premises and/or deliver vacant possession of the ground floor space to the appellant, and that the OCS, Central Police Station, be directed to facilitate the enforcement of the orders.
21. On 19/9/23, the Tribunal ordered that the motion be served upon the respondent for a hearing inter partes on 3/10/23.
22. On 3/10/23, the court allowed the application of 15/9/23 in the following terms;
  - a. That the pleadings herein have been duly served upon the respondent herein and an affidavit of service filed in court but the respondent has filed no response.
  - b. That the tenant vacate the business premises and or deliver vacant possession of the ground floor to the applicant forthwith, known as LR No 209/525/20, within a building known as Alshons, Latema Road in the CBD, Nairobi.
  - c. The OCS Central Police station to enforce the orders
  - d. That costs of Kshs 30,000/- awarded.
23. In issuing the above orders, the court noted that the notice to terminate was properly served and that there was no objection from the tenant. Following these orders, the tenant was evicted on 10/11/23 with the assistance of law enforcement officers from the Central Police Station.
24. Alarmed by the new development, the tenant filed a notice of motion dated 14/11/23, seeking inter alia a stay of execution of the orders issued on 4/10/24 and served upon the tenant on 10/11/23, which ordered the tenant to vacate the premises. It also sought the setting aside of the said orders.
25. Upon considering the motion of 14/11/23, the Tribunal made the following orders: an order to maintain the status quo as at 29/11/23 at 10:35 am; the landlord/respondent is to file a reply and



- ensure the preliminary objection is recorded; the inspection of the said premises is to be conducted at 2 pm on 30/11/23 in the presence of both counsels or their representatives; and the matter is to be mentioned on 1/12/23 for further directions.
26. Come the next hearing date (1/12/23), the Tribunal (Hon Makori presiding) informed the parties that he was reluctant to vary the orders of Hon Ndegwa issued on 3/10/23 and directed that the matter be referred back to Hon Ndegwa. Meanwhile, he ordered that the status quo as at 1/12/23 be maintained, and that neither the tenant nor the landlord enter the premises.
27. In response to the tenant's application dated 14/11/23, the appellant filed a preliminary objection dated 28/11/23 on the following grounds;
- a. The Hon Tribunal lacks jurisdiction to entertain and hear this matter or application as the tenant vacated and was evicted from the business premises shop on 10/11/23, which he had occupied before.
  - b. There exists no relationship governing or connecting the landlord and tenant herein on any tenancy due to vacating the business premises.
  - c. The business premises being the subject matter herein are already in possession and occupied by another tenant, being a protected tenant.
  - d. The Hon Tribunal lacks jurisdiction; thus, any subsequent proceedings will be a nullity.
28. Upon determining the tenant's motion of 14/11/23 and the appellant's Preliminary Objection dated 28/11/23, the Tribunal pronounced itself as follows; the Preliminary Objection was dismissed, and the Notice of motion dated 14/11/23 was allowed in the following terms;
- a. The tenant is entitled to the demised premises and the Landlord is directed to allow her free access to the same and further restore her goods/stock/merchandise carted away from the said premises within seven days of the date of the ruling.
  - b. The tenant has 14 days to respond to the reference and application herein and dated the 15/9/24 and serve the same to the respondent.
29. It is this decision that has aggrieved the appellant, hence the lodgment of this appeal.
30. Having given the litigation history of this matter, I will now turn to the issue of service of the notice.
31. It is the respondent's case that he was not served with the notice of termination of tenancy, the application and the hearing notice for 3/10/23. That he had litigated with the appellant before and therefore was well aware of the implications of ignoring the court summons. That the purported affidavit of the process server was consequently a forgery. The appellant asserted that the tenant was duly served.
32. The Learned Tribunal Member had this to say;
- “I have keenly looked at the affidavits of service by Mathew Musotsi, sworn on 14/9/23, and what comes out clearly of the same is that the process server never became aware that the tenant was a lady. There is also no explanation in the affidavit of service on the whereabouts of the tenant and the reason the process server was serving her agent. The affidavits of service are very elaborate but miss out on the most fundamental issue of identifying the prospective recipient of the subject of the process, which was purportedly affected. I highly doubt that the tenant was ever served with the court processes. If the process server ever ventured into



the demised premises, or served the court processes, he would have known better than what we have in his said affidavits of service”.

33. According to the affidavit of service sworn by Mathew Mutsotsi on 28/9/23, he stated as follows;
- a. “ THAT I am a court process server duly authorized to effect service within the Republic of Kenya, {annexed pay slip and certificate for process server}
  - b. That on the 20<sup>th</sup> day of September 2023, I received copies of Court Order dated 19/09/2023, a Certificate of Urgency, Application and supporting affidavit with annexures dated 15/09/2023, a Hearing notice dated 19/09/2023 from the firm of Njoroge Mwaura & CO. Advocatesto effect service upon the resident/tenant herein.
  - c. That on the same day at around 3:00p.m, I proceeded to the tenant’s business premises being shop 3 situated in Alshons building, Latema road, at the CBD Nairobi.
  - d. That having served the tenant before with notices to terminate or alter tenancy, I knew the tenant well and his physical business location.
  - e. That the tenant’s description is a man of about 70 years, of Asian origin, dressed in Grey Blazer closed, and had his colleague worker being of about 50 years, dressed in a black t-shirt.
  - f. That upon arrival I found a gentleman whom I introduced myself and the purpose of my visit to and he in turn called the tenant who was within the said business premises.
  - g. That I once again introduced myself and the purpose of my visit to the tenant of effecting service over the pleadings stated in paragraph 2 above upon the tenant, who was known to me personally, having served him before.
  - h. That he started shouting and told me that the landlord should face him personally and stop wasting time in court as he has stayed in the shop for long as a tenant and he felt like he owns it.
  - i. That he further went ahead and arrogantly started claiming that Business Premises Rent Tribunal was a small court and cannot his case and said it can only be handled by the High Court.
  - j. That I informed him that my role was just to serve him and if he had anything to say he was allowed to use the right channels which are tribunal or court.
  - k. That he eventually received my notice but declined to sign on my copies and told me “tutakutana mbele” then he clicked twice.
  - l. That I return the service herewith duly served, acknowledged but not signed.
  - m. That what is stated herein is true to the best of my knowledge, information, and belief.”
34. Earlier on 14/9/23, Mathew Mutsotsi, the process server, avowed that on 22/6/23, he received copies of the landlord's notices to terminate or alter the terms of the tenancy dated 21/6/23 from the firm of Njoroge Mwaura & Co Advocatesto effect service upon the tenant. On the same day, in the company of Charles Waweru, he proceeded to the tenant's shop on the ground floor, known as Shop No. 3 in Alshons Building, located on Latema Road in the CBD, Nairobi. Charles pointed out the tenant, and he proceeded to introduce himself and the purpose of his visit. He stated that his name is Shah, after which he handed over the notices but declined to sign the copies, stating that he would consult his lawyers; however, he retained a copy.



35. The person claiming that proper service was effected must show the time when service was carried out on the said person; the manner in which the summons were served; the name and address of the person identifying the individual served; the exact location where the service took place; the name of the person identifying the individual to be served; whether or not the person served is known to the person the summons is meant for, if the person is not known to the process server; if no person is served, the person should indicate the relationship between the person served and the person the summons are directed at, and the source of information must also be specified.
36. In this case, Mayur K Shah adduced affidavit evidence that he has been occupying the premises under a power of attorney from his sister, SK Shah, for the past 12 years. He also admitted that he has dealt with Charles Waweru since 2011 and is therefore known to him. The process server indicated that the first time he served Mayur, it was Charles Waweru who pointed him out, and Mayur introduced himself as Mr Shah.
37. From the above two affidavits of service, the court finds that Mayur Shah was duly served. The Tribunal erred when it concluded that a lady ought to have been served. The situation has been explained by none other than Mayur that he was the one in occupation under a power of attorney.
38. Even if Mayur was not duly served, it is well known that the party alleging non-service has a duty to cross-examine the process server to prove otherwise. In this case, the representative of the Respondent, Mayur, failed to do so; therefore, I find that there is no proof that service was not effected. It is not the responsibility of the court or the opposing party to prove service. The respondent failed. In the circumstances, therefore, the court holds that there was proper service of the notice of termination or alteration of the tenancy, the notice of motion dated 15/9/23, and all the accompanying documents.
39. The trial court, therefore, erred in finding that there was no proper service.
40. Section 4 of the LTA provides that a landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form. A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord in the prescribed form. A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice. A tenancy notice may be given to the receiving party by delivering it to him personally, or to an adult member of his family, or to any other servant residing within or employed in the premises concerned, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.
41. What happens on receipt of the notice? Section 4(6) of LTA provides the answer to this question. It is provided that a receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:



Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this Section.

42. The notice to terminate tenancy dated 21/6/23 informed the tenant that from 1/9/23 the landlord would terminate the tenancy or alter the terms and conditions of the tenancy. The tenant, therefore, had until 1/9/23 to file a reference. The court rightly noted that on 3/10/23, the tenant had not filed any reference, and therefore, the orders requiring him to vacate the premises stood.
43. The tenant was removed from the premises on 10/11/23. It has not been explained why the tenant failed to file the reference at all, despite receiving the notices. From the foregoing, I find that the tribunal's decision of 10/3/25 was sound. The tenant was therefore removed pursuant to the orders of the court thus legally.
44. Having been removed from the premises the controlled tenancy was immediately extinguished.
45. I will now turn to the Preliminary objection filed by the appellant in the trial Court.
46. The Supreme Court in *Petition No. 7 of 2013, Mary Wambui Munene v Peter Gichuki Kingara and Six Others*, [2014] eKLR cited the celebrated case of “Lilian S” *Supra*, 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.”

47. 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 inactions 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.’

48. The jurisdiction of the Tribunal is cited in section 2 of the Act provides as follows;

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment\_

- a. which has not been reduced into writing; or
- b. which has been reduced into writing and which \_
  - i. is for a period not exceeding five years; or
  - ii. contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
  - iii. relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as a tenant, shall be a controlled tenancy”



49. It is widely agreed that the relationship between the parties was based on a controlled tenancy. Since the tenancy was terminated on either 1/9/2023 or 3/10/2023, the Tribunal had no need to decide anything, and the proper course of action was for it to cease its proceedings.
50. I find that the Tribunal member erred in asserting that the Tribunal had jurisdiction, thereby usurping a jurisdiction it did not possess.
51. Regarding whether there was an independent inspection report, the proceedings show that although the court ordered an independent inspection report, none was carried out. Instead, as directed by the court, the appellant filed an affidavit outlining the status quo on the ground, noting that the tenant had vacated and the premises were under renovation by the new tenant. I find that nothing turns on this.
52. Final orders for disposal
- Ultimately, I find the appeal to have merit. It is allowed as follows;
- a. The Hon Business premises Tribunal's Order made on 29/2/24 and or 1/3/24 be and are hereby set aside in its entirety.
  - b. The Preliminary Objection dated 28/11/2023 by the Landlord is hereby upheld.
  - c. The costs shall be in favour of the Appellant
53. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25<sup>th</sup> DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

N/A for the Appellant

N/A for the Respondent

Mr Juma HB for Mr Njuguna for the Interested party

C/A – Ms Kendi

