



**Kungu & 6 others v Gituthu (Environment and Land Appeal E228 of 2024)  
[2025] KEELC 6667 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6667 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E228 OF 2024**

**JG KEMEI, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**MOSES GAKUNYA KUNGU ..... 1<sup>ST</sup> APPELLANT  
DANCHEM PHARMACY LTD ..... 2<sup>ND</sup> APPELLANT  
CHARLES MBUGUA THUO ..... 3<sup>RD</sup> APPELLANT  
GICHANE ELECTRICALS ..... 4<sup>TH</sup> APPELLANT  
MASTEN PHARMACEUTICALS ..... 5<sup>TH</sup> APPELLANT  
ESTHER WAIRIMU KIHARA ..... 6<sup>TH</sup> APPELLANT  
MARTHA MUTHONI GITUTHU ..... 7<sup>TH</sup> APPELLANT**

**AND**

**MARTHA MUTHONI GITUTHU ..... RESPONDENT**

*(Appeal arises from the Judgement of the Business Premises Rent Tribunal  
(herein after referred to as the Tribunal) by the Honourable Gakuhi Chege  
and Joyce Akinyi Osodo delivered on 13/12/2024 in BPRTC No. E800 OF 2023)*

**JUDGMENT**

1. This appeal arises from the Judgement of the Business Premises Rent Tribunal (herein after referred to as the Tribunal) by the Honourable Gakuhi Chege and Joyce Akinyi Osodo delivered on 13/12/2024 in BPRTC No. E800 OF 2023.
2. The Appellants are tenants who have rented premises from the Landlord, Respondent herein. As noted in the judgement, the Appellants filed their references with the Tribunal on 17/08/2023 pursuant to Section 6(1) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap. 310, Laws of Kenya, seeking to terminate their tenancies over LR NO. 209/1837, Bidii House, Duruma



Road, Nairobi City, effective from 1/09/2023. The notices are based on the ground that the Landlord requires possession of the premises for renovation and repair in accordance with the demands of the Public Health Department of Nairobi Metropolitan Services attached thereto.

3. That the Appellants herein, as Tenants, did not wish to comply with the Respondent's notice and filed their reference on 17/08/2023 in opposition to the Notice of termination served upon them by the Respondent.
4. On his part, the 1<sup>st</sup> Appellant, who testified on behalf of the other Tenants, contended that he had been a tenant in the suit premises for over 15 years and has had three other landlords since 1998, operating an electrical shop called Dajohn Enterprises Limited. The Appellants averred that they objected to the notice to terminate the tenancy because the Respondent has been receiving notices from the Public Health Department of Nairobi County regularly, instructing him to refurbish the premises, and he has been complying without vacating the premises. He wondered why the other Landlords have never asked him to vacate. He stated that upon receipt of the notice, he requested the Respondent to reconsider his decision and allow him to carry out the repairs as he had been doing previously. However, the Respondent declined. He argued that the suit premises are habitable, as he has been maintaining them throughout his period of occupation.
5. The Respondent's case, on the other hand, was that the suit premises are in a dilapidated state due to its inability to properly maintain them while the Tenants are in occupation. The Respondent's Witness stated that the Respondent was served with a 14-day notice to refurbish the premises. A subsequent notice was served to it to undertake extensive repairs within 30 days. The Respondent's Landlord consulted a structural engineer who confirmed that the premises require serious refurbishment to match up to similar buildings in the area. The Structural Engineer, in his testimony, stated the kind of repairs needed, including work on the floors, plumbing, building more toilets, repainting, wiring, among others. He also testified that retaining the Tenants during the renovations would cripple their businesses, as there would be no access. The Witness thus recommended that the building be made completely vacant during the renovation period for safety purposes and to enable the work to be carried out properly.
6. Upon considering the evidence on record and the submissions by the parties, the learned Chairman and Member of the Tribunal dismissed the Appellants' references with costs and upheld the Respondent's notices to terminate the tenancies. The tribunal granted the Appellant Forty-Five (45) days to vacate the premises; failing which, they would be evicted therefrom by a Licensed Auctioneer.
7. Being aggrieved by the said Judgment and decree, the Appellants filed the present appeal vide the Memorandum of Appeal dated 23/12/2024 and set out the following grounds: -
  - a. The Learned Member of the Tribunal Hon. Gakuhi Chege erred in law in dismissing the Tenants' references dated 17/8/2023 thereby terminating the Tenants' tenancy without considering the evidence from the Tenants that clearly demonstrated that the Tenants had current trade licenses which are normally issued after the City County authorities are satisfied that the premises are in good tenantable condition.
  - b. The Learned Member of the tribunal erred in law in considering the exhibits by the Landlord from the city county that the premises required just a minor repairs and paintings as clearly demonstrated by the evidence of the notices from Nairobi City County Health Department.
  - c. The Learned Member of the Tribunal erred in law in dismissing the Tenant's reference when the Landlord had not demonstrated financial capability to carry out the proposed renovations.



- d. The Learned Member of the tribunal erred in dismissing the Tenants’ references and approving the Landlord’s notice when the Landlord had not exhibited any bill of quantity or renovation plans for the proposed renovations.
  - e. The Learned Member of the tribunal erred in law in dismissing the tenants’ reference and approving the Landlord’s termination notice even when the proposed renovations did not meet the criteria set out in Section 7 (1) F of the Landlords (Shops, Hotels and Catering Establishments) Act, Cap.301 Laws of Kenya.
  - f. The Learned Members erred in law and in the Judgment by granting the Tenants only 45 days to vacate the premises thereby not considering the extent of their business and the costs of relocating the businesses.
  - g. The Learned Member erred in law in not taking into account the objectives of the Landlords (Shops, Hotels and Catering Establishments) Act, Cap.301 Laws of Kenya which is to protect the tenants from unlawful eviction and exploitation by the Landlords.
8. For the foregoing reasons, the Appellants respectfully request that the appeal be allowed and the aforementioned Judgment/orders be set aside. They also request that their references dated 17/08/2023 be upheld with costs, including the costs of the appeal.
  9. The Court directed that the appeal be considered through written submissions, which were duly filed by all parties. The Appellants submitted their documents dated 8/7/2025, while the Respondent filed their submissions dated 16/7/2025.

### **Appellants’ Submissions**

10. The Appellant submits that termination of tenancy on the grounds of renovation is provided for under Section 7(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301 Laws of Kenya. It was incumbent upon the Tribunal to evaluate the evidence while considering the objectives of the Act, which aim to protect tenants from unlawful evictions and exploitation by landlords. The Appellants cite the case of Embu Gatari Housing Co-op Society –vs- George Thuo Tia Paramount Café & 2 Others [2021] KEELC 435 (KLR) and argue that, for tenancies to be terminated on the mentioned grounds, the landlord must demonstrate that: it has a genuine, firm, and settled intention to demolish or reconstruct the premises; it has approved architectural and structural drawings from the relevant government authorities; it has quantified the costs of the proposed construction (including a Bill of Quantities); it has the resources or financiers willing to fund the project; and that the proposed construction cannot be carried out while the tenants remain in possession.
11. On the first ground, the Appellants argue that the Landlord lacked genuine intention and was not acting in good faith. They claim that the Notices from the Public Health Department concerned minor repairs. These repairs are not the kind that would require the Appellants to vacate the premises. They accuse the Respondent of colluding with the Department to terminate their tenancies while simultaneously approving the Appellants’ Business Licences.
12. The Appellants further contend that the Landlord has never submitted any approved architectural plans or structural approved plans from Nairobi City County Government. They argue that such plans are mandatory. The Landlord only submitted its own Engineer’s Report, which cannot be executed without approved plans from the County. Regarding costs, it is submitted that the Respondent did not provide any details of potential costs for the intended reconstruction of the suit premises. Furthermore,



no bank statements or a letter from any financial institution have been provided to demonstrate the capacity to carry out the construction.

13. They assert that the Engineer's Report is subject to approval by the County Government and cannot serve as the basis for evicting the Tenants without such approval. The Appellants further assert that, in light of their current trading licences, it was unreasonable and contrary to Section 9 of Cap. 310 for the Respondent to vacate the premises. They argue that a period of not less than a year would have been reasonable. They urge the court to re-evaluate the evidence and allow the appeal with costs.

### **Respondent's Submissions**

14. The Respondent restates the facts of the case and asserts that the Public Health Department is awaiting the Court's decision before initiating legal action against the Landlord. The Respondent cites the provisions of Section 7 of the Act and contends that it has demonstrated its intention to carry out works that cannot be undertaken without obtaining possession. The Expert's Report was never contested by another Expert's Report; therefore, the Tribunal cannot be faulted for relying on it.
15. The Respondent argues that demonstrating its intention to comply with the Notices served on it proves that it has the means. Additionally, the Respondent asserts that as an investor, it is entitled to a fair return on its investment, especially considering that some floors are unoccupied, which necessitates renovations. It is also contended that the Respondent's right to property, as provided under Article 40(3) of *the Constitution*, has been violated, particularly regarding the unutilized floors. The Respondent maintains that it would be tragic if the Landlord were to be denied vacant possession, only to face prosecution or have the building condemned.

### **Analysis and Determination**

16. I have perused the record of Appeal. I have also considered the grounds set out in the Memorandum of Appeal and the parties' rival submissions. I have also taken into account the relevant legal frameworks and jurisprudence. In my view, the issues that arise for determination are:
  - a. Whether there was a valid notice issued to terminate the tenancy.
  - b. Whether the Judgment of the tribunal was against the weight of evidence.
  - c. Whether the appeal has merit or not.

### **Whether there was a valid notice issued to terminate the tenancy**

17. As the first appellate court in this matter, this court has an obligation to re-consider and re-evaluate the evidence and to determine whether the conclusions reached by the Tribunal are to stand or not and to give reasons either way. See *Selle & Another v Associated Motor Boat Co. Ltd & Others* (1968) EA 123 and *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR.
18. There is no dispute that the Respondent issued Notices dated 22/06/2023 to the Appellants, with an effective date of 1/9/2023. The respondent's reason for terminating the tenancy was because it planned to renovate and upgrade the suit premises and could not do so without first obtaining vacant possession.



19. I have perused the said notice. The same was expressed to be brought under Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya. The same provides as follows: -

“ 4 (2) 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.”

20. Section 4(4) of the said Act provides that:

“No tenancy notice shall take effect until such date not being less than two months’ after the receipt thereof by the receiving party as shall be specified therein...”

21. Further, Section 4(5) of Cap 301 provides: -

“ 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”.

22. Regulation 4 (1) of the Landlord and Tenant (Shops forms and procedure) Regulations provides that the notice under Section 4 (2) of the Act by a landlord shall be in Form A in the schedule of those regulations.

23. Having looked at the Landlord’s notice to terminate tenancy, I am satisfied that the same complied with all the requirement of Section 4(2), 4(4) and 4(5) of the Act as well as regulation 4(1). Therefore, and as rightly held by the Tribunal, I find that the notice to terminate tenancy dated 22/06/2023 was a valid notice under the Act.

Whether the Judgment of the tribunal was against the weight of evidence

24. The next issue to consider is whether the Tribunal's Judgment was against the weight of evidence. The notice in question stated that the respondent intended to renovate and upgrade the suit premises and could not possibly do so without first obtaining vacant possession.

25. Section 7(1) (f) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act provides that some of the grounds upon which the Landlord may seek to terminate tenancy include;

f that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises.

26. The Appellants argue that the Respondent lacked genuine intent and was not acting in good faith. They claim that the Notices from the Public Health Department concerned only minor repairs, which are not the type of repairs that would necessitate the Appellants vacating the premises.

27. The Respondent, on the other hand, argues that it has demonstrated its intention to carry out such works that cannot be performed without obtaining possession. The Expert’s Report was never contested by another Expert’s Report, so the Tribunal cannot be faulted for relying on it. It further



argues that it has shown its intention to comply with the Notices served on it, which in itself indicates that it has the means.

28. It is clear from the evidence presented at the Tribunal that the Respondent indeed intended to carry out significant renovations on the suit premises following the Notices from the Public Health Department of the County. The proposed repairs concern sanitation of the premises. The Notice dated 27/04/2023 requires the Respondent to repair all cracks and chipped areas on the floors throughout the premises; eliminate all signs of dampness; provide at least four adequate sanitary facilities; ensure continuous running water within the premises; and repaint both the internal and external walls of the entire premises.
29. The Respondent called a Structural Engineer who presented his report and further testified that he visited the suit premises and observed the extent of the repairs needed. He stated that the floors have deep cracks which allow water to seep through, causing dampness. He mentioned that the plumbing for the building needs redoing due to the increased number of toilets required, which is at least four toilets per floor. It was his evidence that the roof is leaking and requires complete replacement. The witness also stated that the other floors are unoccupied as they are in deplorable condition. They are currently being used for storage. He concluded that the premises must be vacant before repairs can be undertaken.
30. *The Constitution* underlines the importance of public health and sanitation by granting everyone the right to the highest attainable standard of health and the right to reasonable sanitation standards under Article 43(1). It obliges the State to promote, protect, and realize these rights through policy and legislation, with county governments responsible for water and sanitation services. The *Public Health Act*, Cap. 242 Laws of Kenya, requires county governments to ensure their counties remain clean and sanitary, and to take measures to prevent or address any nuisance or condition that poses a health risk. It is within this context that the Notices were issued.
31. It is clear that the leased premises require renovations, including the replacement of floors and plumbing. Although the Appellants state that the repairs are minor, I hold a different view. The Appellants' Witness confirmed at trial that the Landlord was required to address the dampness. He further confirmed that there are leakages from the roof, which may explain the cause of the dampness in the building. The Structural Engineer, who is an expert, states that such renovations can only be carried out when the premises is vacant. The Appellants, who are not experts, could only challenge the Expert's opinion by calling another expert to support their assertion that the renovations could be done while they are in occupation, which they failed to do.
32. I further agree with the Respondent that, as proprietor, it is entitled to fully benefit from its property in accordance with Article 46 of *the Constitution*. Additionally, Article 66 of *the Constitution* states that the State may regulate land use for public interests such as defence, public safety, public order, public morality, public health, or land use planning. In this case, the Respondent is clearly not utilizing some of the floors of its property.
33. In my view, the appellants' argument that they had carried out extensive renovations on the suit premises was not supported by sufficient evidence. I am also not persuaded by the appellants' argument that they stand to suffer substantial loss if the tenancy was terminated. In my humble opinion, the reason the appellants were given the notices was to allow them to source alternative premises where they could continue their businesses, as the suit property was being renovated.
34. I, however, agree with the Respondents that the 45 days granted to them is not sufficient. In balancing the interests of the Appellants as business persons and that of the Respondent as an investor, I believe



that 90 days will be sufficient for the Appellants to find alternative premises to continue their business. It is for this reason that I find the appeal partially successful.

35. Final orders for disposal

- a. The upshot is that this appeal is partially allowed.
- b. The Judgment of the Tribunal delivered on 13/12/2024 be and is hereby modified to allow the Appellants 90 days from the date of this judgment within which to vacate the premises.
- c. Failure to do so shall entitle the Respondent to evict them.
- d. Each party shall bear their own costs of the appeal and those of the Tribunal.

36. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>th</sup> DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the Presence of:

Mr. Kinyua for the Appellant

Mr. Kiarie for the Respondent

C/A – Ms. Yvette

