



**Mbugua v Morjaria (Environment and Land Appeal E029 of 2025)
[2025] KEELC 6666 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E029 OF 2025**

JG KEMEI, J

SEPTEMBER 29, 2025

BETWEEN

DIANA W. MBUGUA APPLICANT

AND

VIJAY B MORJARIA RESPONDENT

RULING

1. What is before the Court is the Applicant's Motion dated 3/2/25 seeking, inter alia, that pending the hearing and determination of the application herein, the landlord be ordered to open or remove the padlock on the rented premises; and that the landlord be restrained from further harassment of the Applicant, including using the police to threaten her and her family, pending the hearing and determination of the appeal.
2. Diana W Mbugua stated in her sworn affidavit that the landlord issued an illegal one-week notice to vacate the suit premises on 26/1/25. Despite paying rent, as shown in the attached Mpesa statements, the landlord unlawfully locked her and her family out of the house on the night of 31/10/25, leaving them destitute and without shelter.
3. Additionally, she stated that the landlord entered her house in August 2024, converted one of the rooms into his own, stole her daughter's laptop, and sexually abused her ailing daughter, an incident she has reported to the police. She explained that the landlord has been harassing her and her family verbally and psychologically, thereby violating their rights to dignity and privacy. She urged the Court to grant the prayers sought.
4. The Landlord/respondent opposed the application via the replying affidavit sworn by Vijay B Morjaria on 28/2/25.
5. He admits that the Applicant was a tenant on the leased premises, paying a rent of Kshs 15,000/- in addition to utility costs. When the tenancy expired on 31/8/24, the tenant failed to surrender vacant



possession by vacating the premises. Consequently, the landlord issued a notice for vacant possession on 5/10/24, subject to the payment of the outstanding rent and utilities. Instead, the tenant filed a suit at the Rent Restriction Tribunal (RRT) under RRC/E1590 of 2024, from where she obtained interim orders on 13/11/24. She continued to occupy the house without paying rent, contrary to the Tribunal's orders. On 21/1/25, the appellant's case was dismissed on the grounds that the Tribunal lacked jurisdiction to hear and determine the dispute. The outstanding rent as at 31/1/25 stood at Kshs 54,990/-.

6. Due to rent defaults, another notice was served to the tenant on 22/1/25, demanding she vacate the premises upon settling the outstanding rent. That on 29/1/25, the tenant absconded from the premises, leaving unpaid rent behind. Following the tenant's departure, the landlord rented the property to another occupant.
7. He further averred that the premises were never locked and, in fact, the tenant started removing her belongings when she obtained interim orders from the Tribunal and ultimately vacated the premises on 29/1/25.
8. In response to the allegations of laptop theft, molestation, and harassment of the tenant and her family, the deponent denied all such claims and described them as a late attempt to obscure the rent defaults, portray him negatively, and unjustly garner sympathy from the Court.
9. The Court was urged to disallow the application with costs.
10. The parties elected to canvass the application by way of written submissions, which I have read and considered.
11. The key issue for determination is whether the application is merited.
12. It is trite that parties are bound by their pleadings. The authors of Bullen and Leake and Jacob's Precedents of Pleadings, 12th Edition, London, Sweet & Maxwell stated :-

“The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the Court will be called upon to adjudicate between them. It thus serves the two-fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the Court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the Court will have to determine at the trial.”

13. Sir Jack Jacob in an article entitled “The Present Importance of Pleadings” published in (1960) Current Legal Problems and which article was quoted with approval by the Supreme Court of Malawi in *Malawi Railways Limited v Nyasulu* [1998] MWSC 3 stated;

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings... for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The Court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the Court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the



parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice...”

14. It is also well established that in an adversarial system of litigation, the parties themselves determine the trial's agenda through their pleadings, and neither party can complain if that agenda is strictly followed. This is because the judge's role is to hear and decide on the issues raised by the parties, not to conduct an investigation or inquiry on behalf of society at large, as is believed to occur in some foreign jurisdictions.
15. For the above reasons, parties are not allowed to depart from their pleadings to enable parties to prepare their evidence on the issues as joined and to avoid surprises, as no opportunity is given to the other party to meet the new situation.
16. In the instant application, the applicant has sought a prayer that the Landlord be ordered to open or remove the padlock from the suit premises pending the disposal of the application. Literally speaking, this prayer, as it stands now, is exhausted, and there is nothing for the Court to grant.
17. Even if I were to consider the said prayer, the Court would examine the core issue of whether the applicant was unlawfully removed from the premises, a matter that remains unresolved. It is sufficient to state that, based on the said averment, it can be inferred that the tenant is no longer on the premises, hence the plea to be restored back to the premises. The respondent argued that the tenant vacated the premises on or about 29/1/25, following a notice to vacate upon payment of the outstanding rent. The tenant contended that the landlord locked them out on 31/1/25.
18. I understand the tenant's plea to be that the alleged locking of the premises has prevented her from accessing her daughter's medicines, her grandson's schoolbooks, and uniforms stored in the house. The respondent has denied this claim and insists that the tenant left the premises voluntarily and took her belongings with her. The onus was on the tenant to prove that these items remained in the house so the Court could issue access orders. The applicant failed to do so.
19. Secondly, she claims she has been locked out and deprived of shelter, and she is pleading with the Court to restore her to the premises. The respondent has stated that the tenant owes rent amounting to Kshs 54,990/- and that after her absconding, the house was rented to another tenant. Conversely, the tenant asserts that she has paid all the rent due. I have reviewed the M-Pesa statement, which shows that the last rent payment was on 16/10/2016. The tenant has not provided any evidence proving that rent has been paid up to January 2025.
20. The Court is of the view that the applicant has not established a prima facie case to justify the issuance of the orders.
21. The landlord's allegations of sexual harassment and threats have been denied. The Court regards such claims seriously, as they imply an infringement of individual rights. However, it should be noted that this Court does not have the jurisdiction to hear them. The applicant should seek appropriate remedies in the proper fora. I say no more.
22. In the end, I find the application dated 3/2/25 has no merit. It is dismissed with costs to abide the determination of the appeal.
23. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29th DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS.



J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

NA for the Appellant

Mr. Ong'undi for the respondent

CA -Yvette

