



**Mwangi & 11 others (Environment and Land Appeal 038 of 2024)
[2025] KEELC 6586 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6586 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL 038 OF 2024
MN GICHERU, J
SEPTEMBER 29, 2025**

**IN THE MATTER OF
DANSON MWANGI & 11 OTHERS RESPONDENT**

RULING

1. The Appellant seeks the following orders in this appeal.
 1. That this appeal be allowed.
 2. That the ruling dated 22-7-2024 by the Business Premises Rent Tribunal at Nyeri in case No. E131 of 2023 be set aside.
2. The grounds in the memorandum of appeal dated 22-8-2024 are as follows.

The tribunal erred in law and in fact in-

 - i. failing to distinguish between the subject tenancy and ownership of the subject property,
 - ii. purporting to sit as a regular Court, hence purporting to adjudicate on property ownership whereas it had no such jurisdiction,
 - iii. misapplying the principle of res judicata and
 - iv. ordering costs which are exercise and unlawful.
3. The brief facts of the case are as follows.

Firstly, on 19-3-2024 Andrew Kiiru Kamau moved the tribunal seeking stay of execution of orders issued on 15-12-2023. The orders of 15-12-2023 were directed to the said Andrew Kiiru Kamau ordering him and the tenants to give vacant possession of the suit premises failing which there would be forceful eviction of him and the tenants. The orders had been issued exparte pursuant to an application dated 3-11-2023 made by the Appellant herein.



Secondly, the application was supported by an affidavit in which it was deposed that the Appellant herein had misrepresented himself as the owner of the suit premises by presenting a decree issued in Nyeri HCCC No. 62 of 2012. He failed to disclose that the said decree had been obtained *ex parte* and had subsequently been set aside in Nyeri ELC Case No. 87 of 2017. The case was later transferred to CM's Court Murang'a and registered as CMCC No. 194 of 2018. In the Murang'a case an application by the Appellant to replace the deceased administration was dismissed on 3-3-2022. Upon the dismissal of the application, the Appellant filed another suit on 30-5-2022 against Andrew Kiiru Kamau *vide* Murang'a ELC No. E013 of 2022 seeking eviction orders against him and all the tenants in the suit premises. The said suit was struck out for being *res judicata* in a ruling dated 23-2-2023. The said ruling barred the Appellant from filing any other suit pertaining to the suit land and condemned him to pay costs of the suit amounting to Kshs. 111,840 which were never paid. It was contended in the application dated 19-3-2024 that the Appellant knew that he had no lawful claim over the suit property when he instituted the suit and he obtained the orders through false misrepresentation to the tribunal and in contempt of the orders in ELC Murang'a E013 of 2022.

Thirdly, in opposing the motion dated 19-3-2024, the Appellant filed a replying affidavit dated 18-4-2024 deposing that he was a stranger in the suit making the application an abuse of the court process. According to the Appellant, the suit property never belonged to Julius Kamau Mwangi.

Fourthly, Andrew Kiiru Kamau was the Defendant in the Murang'a suit which was struck out and he was entitled to participate in the suit now being appealed against. In any event, the orders were in the nature of a review and can be sought by any aggrieved person since the issue of ownership had been determined in previous litigation, the tribunal could not be properly seized of the same matter.

Fifthly in its judgment the Court arrived at the following findings. One, Appellant was barred from filing fresh cases by ELC E013/2022 and the tribunal suit ought not to have been entertained. Two, the tribunal case was *res judicata*. Three, Andrew Kiiru Kamau had the requisite *locus standi* as a person aggrieved by the orders of the tribunal to seek review under Order 45 rule 1 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*. Three, proceeding under Section 12(1)(1C) as read with Section 13 of Cap 301, the tribunal ordered compensation of Kshs. 100,000/= on the ground that Andrew Kiiru Kamau had been forced to hire legal representation in setting aside the *ex parte* orders.

4. The Respondents, though served, did not participate in this appeal.
5. The Appellant filed written submissions dated 13-6-2025 and raised the following issues.
 - i. Whether the tribunal exceeded its powers in delivering the ruling dated 22-7-2024.
 - ii. Whether the tribunal made a decision on the ownership of the suit land.
 - iii. Whether the tribunal had power to assess costs.
6. I have carefully considered the appeal in its entirety including the record, the grounds, the submissions and the issues raised therein. This being a first appeal, "this court must reconsider the evidence adduced at the tribunal, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Courts findings of fact." See *Selle and another vs. Associated Motor Boat Company Ltd and Others* [1968] EA, 123.
7. Applying the above principles in this case, I find as follows on the grounds of appeal and the issues raised in the Appellants written submissions dated 13-6-2025. Regarding the first ground of appeal, I find that the tribunal did not fail to distinguish between the subject tenancy and the ownership of the suit property. The three findings by the tribunal related to the barring of the Appellant from filing



fresh suits by the ELC Murang'a in case No. E013/2022, the tribunal case being res judicata owing to the previous suits and Andrew Kiiru Kamau having the requisite locus standi to seek review under Order 45 Civil Procedure Rules and Section 80 of the Civil Procedure Rules. There was no mention of tenancy and ownership of the suit property in the entire judgment. The first ground of appeal has therefore no merit. This finding covers the second ground of appeal because the tribunal did not rule on the ownership of the suit property.

8. Regarding the third ground of appeal, I find that the tribunal did not misapply the principle of res judicata. In the original record, there is a copy of ruling dated 23-3-2023 striking suit No. E013/2022 for being res judicata. This order also barred the Plaintiff from filing any other suit pertaining to the suit land. The finding that the suit was therefore res judicata was not the making of the tribunal but of the ELC Murang'a Court in E013/2022 in the ruling of 23-2-2023. The tribunal was right to reach this obvious conclusion.
9. Section 12(1) (K) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301 provides as follows.

“ A tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power-

(K) to award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious”.

As can be clearly seen from the above provisions, the Tribunal had statutory authority to award costs including exemplary costs. There is therefore no validity in the fourth ground of appeal.

10. For the above stated reasons, I find no merit in the appeal dated 22-8-2024 and I dismiss it. Since the Respondents did not file any submissions or even appear in Court, there will be no order as to costs.
- It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF SEPTEMBER, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant – Present in person

Respondent - Absent

