

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NUMBER E040 OF 2025

CHARLES NJUGUNA MUIGAI 1ST APPLICANT

MINNE KARIUKI NJUGUNA 2ND APPLICANT

VERSUS

BERNADETTE NJERI GITIMU KIRUMBA 1ST RESPONDENT

ICON AUCTIONEERS 2ND

RESPONDENT

RULING

Introduction

1. This court was moved by the Applicant's a Notice of Motion application dated 7th March 2025 seeking the following reliefs:

1. *Spent...*

2. *THAT upon hearing and determination of this Application exparte, the Honourable Court be pleased to issue an Order granting the Applicants/Tenants stay of execution of the Orders issued on the 6th day of March 2025, Hon. Janice Ikingi (Deputy Chairman).*

3. *THAT upon the hearing and determination of this Application exparte, an order of injunction to issue stopping the Respondents from trespassing, levying distress rent, evicting and carrying out any dealings on the Applicants/Tenants' household goods in their home located at Njathani Road, Muringa Drive, Muthithi Estate within Muthithi Estate.*

4. *THAT upon the hearing and determination of this Suit inter*

partes an order of injunction to issue stopping the Respondents from trespassing, levying distress or rent, evicting and carrying out any dealings on the Applicants/Tenants' household goods in their home located at Njathani Road, Muringa Drive, Muthithi Estate within Muthithi Estate.

5. *THAT upon hearing and determination of this Application exparte/ inter parte the Honourable Court be pleased to issue an Order to set aside, and/or quash the Orders issued on the 6th day of March 2025 by Hon. Janice Ikingi (Deputy Chairman).*

6. *THAT the OCS Kiambu Police Station to enforce compliance of this Court Order and ensure peace prevails.*

7. *THAT the costs of this Application be provided for*

2. The application was met with vehement opposition through the 1st Respondent's Replying Affidavit sworn on 25th March 2025. Essentially, the 1st Respondent termed the application as an abuse of the court process and is seeking its dismissal.
3. In sum, the application calls upon the Court to weigh the competing equities between a tenant asserting protection against what is alleged to be unlawful distress for rent and a landlord invoking her lawful right to recover rent.
4. The parties were directed to cavass the application by way of written submissions.

Issues for Determination

5. Having perused the application, the replying affidavit in opposition and

counsel's submissions, the following issues emerge for determination:

- i. Whether the Rent Restriction Tribunal had jurisdiction to issue the Orders of 6th March 2025.***
- ii. Whether the applicants are entitled the injunctive reliefs sought.***
- iii. Whether the 1st Respondent was entitled to levy distress for rent.***

Analysis and Determination

6. The foremost issue is whether the Rent Restriction Tribunal (hereinafter '*the Tribunal*') lawfully assumed jurisdiction in issuing the orders of 7th March 2025.
7. Jurisdiction is the bedrock upon which all judicial authority rests without which every order crumbles into nullity.
8. The record establishes that the rent payable for the premises was Ksh. 180,000/- which exceeded the statutory limit prescribed under section 2(1)(c) of the *Rent Restriction Act*, which confines the Tribunal's authority to dwelling houses whose standard rent does not exceed Ksh 2,500 per month.
9. Compounding the defect, the proceedings were conducted before the Deputy Chairperson, the Honourable Janice Ikingi, whose

jurisdiction, by virtue of section 4(6) of the Act, is restricted to premises with a standard rent not exceeding Ksh 1,500, save for the limited power of assessing standard rent under section 5(1)(a).

10. Jurisdiction is not a matter of convenience or acquiescence; it is conferred

strictly by statute. Where a tribunal acts beyond the bounds of that statute, its proceedings are void regardless of the parties' participation or consent.

11. This principle has been affirmed in ***Republic v Deputy Chairman, Rent Restriction Tribunal; Wangare & another [2022] eKLR***, where the Court held that:

“The rent payable in our case was agreed at a figure way above the Ksh 2,500 envisioned under the Act. The matter was thus beyond the jurisdiction of the tribunal. The tribunals jurisdiction is granted by statute and it would not confer upon itself Jurisdiction other than as provided in the relevant Act. By entertaining the matter, the tribunal acted without jurisdiction, thus ultra vires and the decision reached is tainted with illegality.”

12. The above reasoning squarely applies in the instant application. The Tribunal's mandate extends only to premises within the statutory rent limit. Once the rent surpassed that threshold, its authority ceased. Jurisdiction cannot be conferred by consent, equity, or convenience.

13. Accordingly, the proceedings before the Deputy Chairperson, and the resulting orders, were void *ab initio*. Acts done without jurisdiction are a legal nullity and cannot be validated by any subsequent conduct.
14. However, I cannot overlook the fact that the Applicants have not approached this court with clean hands.
15. The record shows that the Applicants previously invoked the Tribunal's authority, obtained *ex parte* orders, and enjoyed their benefit. It now ill behoves the same party to impugn that very jurisdiction after previously securing advantage under it.
16. However, equity cannot confer jurisdiction where none exists. The Tribunal's want of jurisdiction is a question of law, not of conduct. No amount of participation or benefit under its process can breathe life into orders issued without lawful authority.
17. The upshot is that the Tribunal's decision remains a nullity, notwithstanding the Applicant's inequitable posture.
18. The Court now turns to the question of whether the Applicants are entitled to the injunctive reliefs sought in the instant application.

19. The foundations of an injunction lie in equity, and it cannot issue to sustain an illegality or to validate proceedings undertaken without jurisdiction.
20. The principles governing the grant of interlocutory injunctions are settled in ***Giella v Cassman Brown & Co. Ltd [1973] EA 358.***
21. The applicant must establish a prima facie case with a probability of success; that they stand to suffer irreparable harm not compensable by damages; and, if the Court is in doubt, the balance of convenience must be considered.
20. The Applicant and 1st Respondent were bound by a tenancy agreement dated 1st September 2022. The Applicants were initially obligated to pay a rent of Ksh. 150,00/- which was later adjusted to Ksh. 180,000/-.
21. The dispute between the parties stems from delayed payment of the rent by the Applicant.
22. On their part, the Applicants assert that the 1st Respondent unilaterally adjusted the rent to Ksh. 180,000/- without their consent.
23. Conversely the, 1st Respondent maintains that the parties negotiated and agreed to increase the rent from Ksh. 150,000/- to Ksh. 180,000/-. They assert that having agreed on the new tenancy terms the Applicants remitted the rent of Ksh. 180,000/- per month; it was paid the rent quarterly in accordance with the agreement.

24. The 1st Respondent further avers that the Applicants failed to trigger the renewal of the lease by issuing a three (3) month notice to the 1st Respondent and since the expiry of the lease, they failed, refused and/ or neglected to pay the rent owed.
25. The delay in rent payment resulted in the 1st Respondent instructing their counsel to demand for settlement of the arrears, which was followed by the ensuing proceedings that precipitated the instant application.
26. Learned counsel for the 1st Respondent submits that the Applicants are using the numerous applications they have filed to buy time and circumvent payment of rent.
27. The court takes note that the Applicants filed an application dated 4th July 2025 in which the Applicants in paragraph 2 of the supporting affidavit of Charles Njuguna Muigai conceded that the Applicants owed the 1st Respondent arrears amounting to Ksh. 650,000/-.
28. The Applicants proceed to confirm in paragraph 4 of the aforementioned supporting affidavit that the arrears were eventually settled.
29. The application dated 4th July was ultimately compromised by consent of the parties on 2nd October 2025. The 1st Respondent maintained that they would not levy distress as long as the Applicants continue paying the rent on time.

30. In the face of these admissions, I find that no *prima facie* case arises.
31. As defined in ***Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125***, a *prima facie* case is one which, on the material presented, shows an infringement of a right that calls for rebuttal. The Applicants have demonstrated no violation of a subsisting right.
32. The issue before this Court is, at its core, a rent arrears dispute. Such disputes do not ordinarily invite equitable relief.
33. Having failed the first limb, the application falters. Yet for completeness, the Court observes that the harm alleged, threat of distress, is one for which damages provide adequate recompense.
34. Even on the final limb, the balance of convenience tilts towards the 1st Respondent, the party seeking to enforce payment of rent lawfully due under an admitted tenancy. To restrain such enforcement would be to sanction indolence under the guise of equity.
35. Accordingly, the Court finds that the Applicants have not met the threshold for the grant of injunctive relief.
36. The final issue to be determined is whether the 1st Respondent was entitled to levy distress for rent.
36. The right of a landlord to levy distress for rent is a statutory remedy governed by the Distress for Rent Act, Cap 293 Laws of

Kenya. It allows recovery of rent lawfully due and unpaid, provided the landlord acts within the confines of the tenancy agreement and the statute.

37. Section 3(1) of the Distress for Rent Act provides:

“Right of distress

(1) Subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case.”

38. This provision preserves the landlord’s common law right to distrain for rent that is due and unpaid under a lawful tenancy. The right arises the moment rent becomes in arrears and remains enforceable, subject only to compliance with the statute and any other written law. It is not dependent on the tenant’s consent, nor extinguished by prior indulgence.

39. In the present application, the tenancy agreement dated 1st September 2022 created a clear rent obligation. The record establishes that the Applicant conceded that rent arrears accrued and were eventually settled.

40. The law on Distress for Rent is well settled in our jurisprudence. See ***Omondi v Kassam & another (2024) KEHC 10703 (KLR)***.

41. In the instant application, there is no dispute that the Applicants are the tenants of the 1st Respondent and at the time this application was filed, they were in rent arrears.
42. The record also establishes that the Applicants were in arrears of rent at the time the 1st Respondent sought to levy distress. The payment was only done after the Orders of this Court issued on 12th March 2025.
43. I therefore find that the Landlord's right to levy distress for rent had crystalized and that the exercise of that right was within the bounds of the law.
44. I must restate that Court processes are not to be invoked as instruments of delay or convenience. Parties who freely enter into contractual obligations must honor them with equal good faith. To seek the Court's protection after default, while the other party merely exercises a lawful right, is to trivialize the very authority of the judicial process. The equitable jurisdiction of this Court will not be stretched to shield indolence or calculated default.
45. Having found that the distress was initiated within the confines of the law, and the Applicants having failed to establish a prima facie case or demonstrate any infringement of a right deserving of equitable protection, the application stands on no legal foundation.
46. Accordingly, the application dated 7th March 2025 is hereby dismissed with costs.

It is so Ordered.

Dated, Signed and Delivered, at Thika this 14th day of October 2025.

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J. M. ONYANGO
JUDGE

In the presence of:

1. Miss Kamau for Mr Njagi for the Applicants
2. Mr Gachoka for the 1st Respondent

Court Assistant: Hinga