



REPUBLIC OF KENYA



**KENYA LAW**  
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**Runo v Gathoni (Environment and Land Appeal E015 of 2025)  
[2025] KEELC 6865 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6865 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E015 OF 2025**

**A OMBWAYO, J  
OCTOBER 9, 2025**

**BETWEEN**

**EMMAH RUNO ..... APPELLANT**

**AND**

**JACINTA GATHONI ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal arising from the ruling of Hon. Joyce Osodo (chairperson) and Hon. Gakuhi Chege (member) delivered on 14th March, 2025 in Nakuru BPRT Case No. E164 of 2024. The Appellant filed a Memorandum of Appeal dated 1st April, 2025 appealing against the said ruling on the following grounds: -
  1. That the Honourable chair and member erred in law and in fact in failing to appreciate the evidence on record.
  2. That the Honourable chair and member misdirected themselves on the matter and as a result arrived at a wrong decision.
  3. That the Honourable chair and member were clearly wrong in the exercise of their discretion and that as a result there has been a miscarriage of justice.
  4. That the Honourable chair and member erred in law and in fact in exercising its judicial discretion arbitrary, contrary to the constitutional principles of exercise of judicial authority and power towards administration of justice as set out in Article 159 of *the Constitution* of Kenya, 2010. The Appellant seeks orders setting aside the tribunal's decision ruling and an order allowing the reference to be heard on merit.



## Brief Facts

2. The Respondents filed a reference dated 30th October, 2024 against the Appellant in which they sought for an order that the Appellant delivers vacant possession of the suit property forming part of Nyandarua Building situate on L.R No. Nakuru Municipality Block 5/98 and in default she is evicted. The tribunal thereafter delivered its ruling on 14th March, 2025 allowing the reference and ordered the Appellant to deliver vacant possession of the suit property. The Appellant being dissatisfied with the ruling lodged the instant appeal before this court which was canvassed by way of written submissions.

## Submissions

3. Counsel for the Appellant filed his submissions dated 19th August, 2025 where he gave a background of the case and identified three issues for determination. The first issue was whether the tribunal failed to consider all relevant evidence before rejecting the preliminary objection. While submitting in the affirmative, he argues that the tribunal did not conclusively consider whether the claim was res judicata. He submits that the ruling failed to appreciate that the present matter had been adjudicated with finality in Nakuru BPRT No. 7 of 2018 and Nakuru BPRT No. E065 of 2023. He relied on Section 7 of the Civil Procedure Rules and the case of Eunice Wanjiru Gathithi the Legal Representative of the Late Fredrick Gathithi Kabue v Cannon Assurance Kenya Ltd [2012] eKLR that cited with approval the Court of Appeal case in Kamunye & Others v The Pioneer General Assurance Society Ltd (1971) E.A 263. He submits that the two cases BPRT No. 7 of 2018 and Nakuru BPRT No. E065 of 2023 addressed tenancy disputes involving the same premises and similar issues of rent remittance and eviction. He went on to submit that the Respondent clothed the same claim in different outfits even when it didn't match the occasion. He relied on the case of Hoystead v Taxation Commissioner (1925) All E.R. It was his submission that the claim of remittance of rent had been litigated and finalized in two previous suits thus the tribunal was estopped from adjudicating it despite different cause of action. He further submits that the parties in the two matters were the same thus rendering the matter res judicata. He cited the case of Omar t/a Sabrin Shop v Highrise Commodities Ltd (Civil Appeal E291 of 2023) [2024] KEHC 6177 (KLR) where the court reiterated the position in Maumbwa & 3 Others v Kisemei (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR). He submits that the Appellant was the Respondent in both BPRT 7 of 2018 and BPRT E065 of 2023 and the Applicant in BPRT E164 of 2024. It was his submission that the Respondents brought the same issue against he Appellant yet the matter had been adjudicated with finality.
5. The second issue was whether the court should set aside the ruling of the tribunal and all consequential orders. Counsel submits in the affirmative. He relied on the case of Joseph Kirugu Njuguna v Land District Tribunal Maragua & 2 Others [2016] eKLR and submits that the tribunal acted beyond its jurisdiction by adjudicating on a matter that had already been determined.
6. The final issue was whether the court has the jurisdiction to adjudicate on the merits of the case. While submitting in the affirmative, he relied on Article 165 (3) (c) of *the constitution* and the case of Kitavi & Another v Ondiek (Civil Appeal E074 of 2023) [2023] KEHC 25236 (KLR). He submits that the Appellant being the aggrieved party had the right of appeal under Section 15(1) of the Landlord and Tenant (Shops and Hotels and Catering Establishment) Act. He submits that this court has the appellate jurisdiction to set aside the ruling and all consequential orders issued by the tribunal.
7. Counsel for the Respondent filed his submissions dated 2nd September, 2025 where he gave a background of the case and identified three issues for determination. The first issue was whether the preliminary objection on res judicata was properly dismissed. He relied on the case of Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd (1969) E.A 696. It was his submission that



the claims in BPRT No. E065 of 2023 and BPRT E164 of 2024 were distinct. He submits that the Appellant in E065 of 2023 sought to be allowed to pay rent through the tribunal. He adds that there was no notice to deliver vacant possession and that the issue of eviction was never handled in the said suit. He submits that the tribunal restricted itself to the issue of rent payment. He submits that the issues raised in in E164 of 2024 had not been raised before in the earlier claims hence the preliminary objection could not stand.

8. The second issue was whether the termination notice issued on 30th May, 2024 was valid and effective. He relied on Sections 12(4), 4(2) and 4(4) of Cap 301, Laws of Kenya and submits that the Appellant was served with the notice on 30th May, 2024 which was to take effect on 1st August, 2024. He submits that the issue of the Applicants were strangers were false since there was on record a power of attorney issued by her then Landlords in 2017. He submits that on the issue of rent payment, the tribunal in BPRT E065 of 2023 directed the Appellant to be paying the monthly rent to a specific joint account operated by the three families as evident from the rulings of 11th August, 2023 and 22nd September, 2023 by Hon. Mumma. He submits that the ruling on payment of rent was given in the interim. He further submits that the continued occupation of the suit premises by the Appellant after termination of the tenancy did not create a new landlord-tenant relationship. He relied on the case of Attorney General v Halal Meat Products Limited (2016) eKLR. He submits that the prayer for vacant possession was unopposed. He further submits that if the appeal will be allowed, it would be tantamount to allowing the Appellant to cling to the rented unit subject of these proceedings which will prejudice the three families. It was his submission that the notice was never opposed by the Appellant and therefore she cannot seek to invalidate a notice she accepted by default.
9. On the final issue, he urged the court to award the Respondents both the costs of the reference and appeal.

### **Analysis and Determination**

10. Having considered the memorandum of appeal and the issues set out by the parties' submissions, the sole issue for determination is whether the appeal is merited.
11. Being a first appeal, this court relies on a number of principles as set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...this court must reconsider the evidence, 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 judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”

Also, in the case of *Peter M. Kariuki v Attorney General* [2014] KECA 713 (KLR) the court held as follows:

“We have also, as we are duty bound to do as a first appellate court, reconsider the evidence adduced before the trial court, and re-evaluate it to draw our own independent conclusions, and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence.” In the preliminary, I shall first interrogate the aspect as to whether the claim was res judicata. The Appellant contends that BPRT Case No. E065 of 2023 and BPRT No. 7 of 2018 dealt with tenancy disputes involving the same premises and similar issues of rent as well as eviction. I have keenly perused the orders of the tribunal dated 16th June, 2023 and



11th August, 2023 and it is not in dispute that the said matters dealt with rent and tenancy disputes respectively. It is also not in dispute that the application dated 30th October, 2024 sought for orders to have the tenant vacate the suit premises. It is this court's view that it was evident from the pleadings that the issues were not similar to the said application and thus the chairperson of the tribunal did not err when it found that the claim was not res judicata.

12. The Appellant also contends that the chairperson and member of the tribunal erred in allowing the application reference which sought her vacating from the suit premises. I have perused the record and it is not in dispute that the Respondent issued the Appellant with a notice to terminate the tenancy agreement. It is evident that the said notice dated 24th May, 2024 was served upon the tenant on 30th May, 2024 and was to take effect on 1st August, 2024. It is not in dispute that the Appellant did not respond to the said notice prompting the Respondent to file the reference dated 30th October, 2024.
13. The procedure for terminating of a controlled tenancy is provided for under Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* which states as follows:- "4. (2) 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."

Section 10 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* further provides that:

10. Where a landlord has served a notice in accordance with the requirements of section 4 of this Act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a Tribunal then subject to section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder." Having considered the holding of BPRT and the provisions of the relevant law, I find that the Respondent did not depart from the wording in the prescribed Form A, notice to terminate to render it invalid. It is a fact that a Notice was issued to the Appellant to the effect that the tenancy agreement shall be terminated for failure to remit rent as well as the Respondent's intention to renovate the premises which the Appellant acknowledged receipt.
14. Consequently, this court is satisfied that the Respondent's Notice of termination dated 24th May, 2024, fulfilled the requirements of Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act). In the upshot, I find no reasons to disturb the BPRT's findings contained in its decision of 14th March, 2025 to have the Appellant vacate the suit premises. I thus find that the appeal is not merited, and the same is dismissed entirely with costs to the Respondent. It is so ordered

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

