



**Ali-Mekhlaf v Sharja Shopping Mall & 2 others; Ahmed & 4 others  
(Interested Parties) (Environment and Land Appeal E019 of 2023)  
[2025] KEELC 7268 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7268 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E019 OF 2023  
JG KEMEI, J  
OCTOBER 21, 2025**

**BETWEEN**

**TAHA HAMOOD ALI-MEKHLAF ..... APPELLANT**

**AND**

**SHARJA SHOPPING MALL ..... 1<sup>ST</sup> RESPONDENT**

**BASHIR MAMO ..... 2<sup>ND</sup> RESPONDENT**

**MICROBIT CONSTRUCTION ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**AYAN AHMED ..... INTERESTED PARTY**

**SIRAD SHARIF ..... INTERESTED PARTY**

**FARDOSA YUSSUF MAALIM ..... INTERESTED PARTY**

**FATUMA GUROW ..... INTERESTED PARTY**

**HAKIMA MAHUBO ABDULLAHI ..... INTERESTED PARTY**

*(Being an appeal against the Ruling and order of Hon A  
Muma in BPRT No E1218 of 2022 delivered on 2/2/2023)*

**JUDGMENT**

**The background**

1. The appellant alleges a landlord-tenant relationship between him and the 1st Respondent. He claims that he entered into a verbal tenancy agreement with the 1st Respondent in August 2018 for the lease of three shops, namely F1, F5, and F7, at a monthly rent of Kshs 130,000, of which he paid a deposit of



Kshs 115,000 to the 1st Respondent. He states that the 1st Respondent was the managing agent for the 2nd and 3rd Respondents, who are the owners of Sharja Shopping Mall in Eastleigh. He asserts that one of the terms of the oral tenancy was that he was permitted to partition the three shops and sublet them to sub-tenants, which he proceeded to do, creating six shops and subletting them to interested parties. He has attached several subleases between himself and the interested parties. He has also included evidence of the premises' partitioning and claims to have spent Kshs 1,500,000 in the process. During the tenancy, he alleges he paid rent to the head lessor without fail. However, his quiet enjoyment and possession of the leased premises were abruptly interrupted in May 2020 when the 1st Respondent instructed the sub-tenants to remit double the rent to it, leaving him without any income. He asserts that the Respondents have breached the terms of the oral tenancy.

2. Following the alleged breach of the tenancy agreement, the tenant filed a reference on 15/12/2022 seeking the orders as
3. Subsequently, the respondents filed a Preliminary Objection on the reference and the application dated 15/12/22 on the grounds that:
  - a. The tribunal lacks jurisdiction to hear this case and the application dated 15/12/2022, which alleges a tenant/landlord relationship and dispute concerning shop numbers F1, F5, and F7 between Taha Hamood Ali Al-Mekhlafi and the respondents, when no such relationship exists either in fact or by implication.
  - b. That applicant or purported subtenants/interested parties are not in occupation of, nor are they tenants of, the respondents at all.
  - c. There is no legal entity known or registered at Sharja Shopping Mall capable of suing or being sued.
  - d. The suit reference and the application dated 15/12/2022, having been filed in contravention of the law, are fatally defective and void. It cannot stand and must be struck out with costs.
4. Upon considering the Preliminary Objection, the court held that in the absence of a tenant-landlord relationship, the tribunal had no jurisdiction to entertain the reference. The PO was therefore upheld.
5. Aggrieved by the decision, the appellant filed this appeal on the following grounds;
  - a. The Hon Chairperson of the Tribunal erred in law by dismissing the appellants' reference and application, both dated 15/12/22, based on a notice of PO that did not raise a pure point of law, when the same was premised on contested factual issues that could only be determined through probing evidence at the main trial.
  - b. The Hon Chairperson erred in determining the issues of whether there existed a landlord-tenant relationship preliminarily, yet evidence was required to conclusively establish this since it was disputed.
  - c. The chairperson, by determining the appellant's reference based on a preliminary objection that did not raise a pure point of law, denied him the opportunity to present evidence to prove his case against the respondents and the interested parties, thereby denying the appellant a fair hearing as required by law.
6. Consequently, the appellant prays that the court allow the appeal and grant orders as follows;



- a. An order be issued reviewing and/or setting aside the ruling and the consequential orders delivered on 2/2/23, dismissing the appellant's reference/complaint dated 15/12/22, and reinstating the appellant's reference and/or complaint.
  - b. An order be issued directing that the matter be referred back to the tribunal and be heard on its merits on a priority basis by another member of the tribunal other than Hon A Muma.
  - c. Amy, or any other relief this honourable court may deem just and expedient to grant.
  - d. Costs of the appeal
7. As directed by the court, the parties filed written submissions, which I have read and considered respectively.
  8. The key issue for determination is whether the preliminary objection was based on a pure point of law. On whether the PO raised a pure point of law.
  9. On what constitutes a Preliminary Objection, in the case of Hassan Ali Joho & Another -vs- Suleiman Said Shabal & 2 Others SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukisa Biscuit Manufacturers Ltd –vs- West End Distributors Ltd (1969) E.A where the Court of Appeal said that:
 

“...a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact needs to be ascertained or if what is sought is the exercise of judicial discretion.”
  10. It is not in doubt that a preliminary objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or the Court is called upon to exercise judicial discretion. In the case of Quick Enterprises Ltd Vs Kenya Railways Corporation, Kisumu HCCC No.22 of 1999, the Court held that: -
 

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”
  11. The Appellant's position is that he was a tenant of the Respondents, having entered into an oral tenancy either in August 2018 or 2019. He contends that the tenancy was terminated by the Landlord when it instructed the sub-tenants to pay rent directly to it, leaving him without any income despite having spent Kshs 1.5 million on renovation and partitioning of the suit premises.
  12. The Landlord/respondents, on the other hand, have vehemently denied any knowledge of the appellant having ever occupied the premises; denied the existence of the oral tenancy; denied that the 1st Respondent is either the Landlord or the owner of the suit premises, and in a way, put the Appellant to strict proof of his allegations.
  13. It is evident from the above summary that the parties have presented arguments and counterarguments regarding whether a tenancy agreement existed between them. The tribunal appears to have concluded that there is an agency relationship between the respondents for the purposes of property management. The issue of the alleged rent remittances to the agency may require an investigation into the nature of these payments and whether a tenancy relationship genuinely exists between the parties.



14. In the end, I find that the objection was not a pure point of law and that the tribunal erred in holding as it did.
15. The appeal is allowed as prayed. The reference is hereby referred back to the Tribunal for hearing and determination.
16. Costs shall abide the determination of the suit in the tribunal.
17. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

Ms OmukokoHB for Mr Ahmed for the Appellant

N/A for the 1<sup>st</sup> Respondent

Mr Ken Murgor H B for Mr Ouma for the 2<sup>nd</sup> Respondent

N/A for the 3<sup>rd</sup> Respondent

N/A for the Interested Parties

CA- Ms Yvette Njoroge

