Kang'ethe & Company Advocates v Nathe Holding Limited (Environment and Land Appeal E185 of 2024) [2025] KEELC 7404 (KLR) (24 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7404 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND APPEAL E185 OF 2024

TW MURIGI, J

OCTOBER 24, 2025

BETWEEN

KANG'ETHE & COMPANY ADVOCATES ..... APPELLANT

AND

NATHE HOLDING LIMITED ..... RESPONDENT

(Being an Appeal from the judgment of Hon Makori in BPRT No. 311 of 2024 delivered on 18th October 2024)

JUDGMENT

1. By a Memorandum of Appeal dated 15th November 2024, the Appellant appealed against the judgment of Hon. Makori delivered on 18th October 2024 in Nairobi BPRT Case No. E311 of 2024.

Background

2. The Appellant instituted this suit at the BPRT upon being served with a notice to terminate the tenancy dated 26th February 2024 on account of non-payment of rent arrears of Kshs 9,153,884/=.

3. The Reference was canvassed by way of written submissions. On 18th October 2024, the Tribunal delivered its ruling in the following terms: -

    a. The Respondents, their agents and/or people acting under their instructions are restrained from evicting, locking out, foreclosing, terminating or interfering with the Tenant/Applicant's peaceful occupation of the demised premises known as Nirvana Business Solution Wing A upon Plot No. 2259/185.

    b. The Applicant/Tenant is ordered to clear the current and/or outstanding rent as at the date of this ruling within 60 days.

    c. In default of the condition (b) above, the Respondent shall be at liberty to distress for rent.

d. The OCS Karen Police Station to ensure compliance.

e. Each party to bear its own costs.

4. Aggrieved by the decision, the Appellant filed a Memorandum of appeal dated 15th November 2024, citing the following grounds:-.

1. That the trial magistrate erred in law in failing to abide by the hallowed doctrine of judicial certainty and clarity that requires that any judicial finding must be clear, precise, ascertainable, and unambiguous regarding the implications and must be understandable by those who are affected by it.

2. That the trial court erred in law and in fact in ruling that it could not ascertain the rent owing yet went on to order the Applicant to clear current and/or outstanding rent as at the date of the ruling.

3. That the trial court erred in law and in fact in failing to recognize that, in order to attain precision, clarity, and unambiguity, it ought to have done simple arithmetic of the Appellant's figures and marry them to his findings to avoid judicial ambiguity.

4. That the trial magistrate erred in law and in fact in failing to follow through its findings that the Appellant had substantial credit in its favour extending to October 2025 which it had proved by way of cogent evidence.

5. That the trial magistrate erred in law and in fact in failing to affirm arising from its findings that the Appellant had no rental arrears at the time of the judgment, but that its tenancy extends to October 2025.

6. That the trial magistrate erred in law and in fact in failing to clarify the computations considered I arriving at the conclusion he did despite overwhelming evidence before it to the contrary.

7. That the trial magistrate erred in law and in fact in failing to affirm in its findings the evidence adduced by the Appellant that the Appellant's substantial credit extends to a specific period without couching its findings in very ambiguous terms.

8. That the trial magistrate erred in law and in fact in failing to direct its mind to the principles enunciated in the body of his judgment and marrying the same to the weighty and precise evidence before it, thereby occasioning a miscarriage of justice.

9. That the trial magistrate erred in law and in fact in failing to demonstrate clarity and certainty in the judgment and its conclusion, thereby occasioning a miscarriage of judgment.

10. That the trial magistrate erred in law and in fact in failing to acknowledge that the dispute between the parties was purely arithmetic in figures reconciliation and that any and/or computations were pertinent for certainty and clarity.

11. That the trial magistrate erred in law and in fact by directing the Appellant to pay rent or any rent outstanding at all contrary to his own finding by necessary and logical implication that the Appellant had substantial credit to its favour consistent with his findings that the Appellant had no arrears as at the date mentioned.

5. The Appellant prays for;

a. That the appeal be allowed and that the order (b) of Hon. Makori's judgment be set aside.

b. That this court be pleased to make an assessment of the rent status based upon the trial court's finding that the Appellant had no outstanding rent arrears.

c. That the Honourable Court be pleased to make a declaration that any action for distress for rent is null and void.

d. Any other order that this Honourable Court may deem fit and just to grant.

e. That the costs of this appeal be borne by the Respondents.

6. The Appeal was canvassed by way of written submissions.

The Appellant's Submissions

7. The Appellant filed its submissions dated 30th May 2025. Counsel submitted that this appeal hinges on the lack of clarity in judicial analysis and accuracy in financial data. It was submitted that the judgment contradicted itself and failed to apply basic arithmetic to resolve the glaring rental statistics.

8. Counsel argued that a judgment must be coherent and logically consistent with its findings. Counsel pointed out that although the trial court explicitly found that the Appellant had explained how rent arrears were cleared, it still ordered payment of current and/or outstanding rent, creating an inconsistency that makes the court's order vague and difficult to understand.

9. Counsel further argued that the trial court's failure to reconcile simple financial figures led to an unreliable, unreasonable, and unjust decision, resulting in the unjustifiable exposure of the Appellant to enforcement actions such as rent distress, despite the court's acknowledgment that no arrears exist.

10. Counsel relied on the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR, where it was held that a judgment that is unclear, internally contradictory, or inconsistent with the findings therein constitutes an error of law, and becomes null and void in its application. Further reliance was placed on the cases of Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR, Peters v Sunday Post Limited [1958] EA 424, Kenya Revenue Authority v Export Trading Co. Ltd [2021] eKLR, Kanji v Bata Shoe Company [1955] 22 EACA 30, and MRWN v SJN [2023] KECA 457 (KLR).

The Respondent's Submissions

11. The Respondent filed its submissions dated 20th June 2025.

12. On behalf of the Respondent, Counsel outlined the following issues for the court's determination:-

a) Whether there was lack of clarity on the amount of rent that the Appellant was to pay?

b) Whether the Respondent has the right to levy distress for rent?

c) Whether the Appeal is merited?

d) Who should bear the costs of the Appeal?

13. Regarding the first issue, Counsel explained that on the same day the impugned judgment was issued in the presence of the parties, the trial court issued directions regarding the rent due, which totaled Kshs. 720,000/= for eight months at a monthly rent of Kshs. 90,000/-, covering the period from when the reference was filed in March 2024 up to the judgment date. Counsel also noted that the Appellant

filed an application dated 30th October 2024 to review the judgment of 24th October 2024. When the application was heard on 7th November 2024, the Tribunal clarified and issued the following directions;

> " It was indicated on the 18.10.24 that the Tenant ought to have started paying rent as from March.
>
> a. On the 18.10.24 the Tribunal made its judgment and confirmed that the amounts payable by the Tenant are the rents as from March, to present date.
>
> b. Rent being Kshs. 90,000/=, the outstanding amounts as at now stands at Kshs.810.000/=.
>
> c. Let the Tenant pay Kshs. 810,000/= within 60 days of the judgment. Failure of which the Landlord is at liberty to distress for rent...."
>
> d. File closed as the application is spent."

14. Counsel argued that it is misleading for the Appellant to claim that the trial court found the Appellant had cleared all rent arrears. In paragraphs 13 and 14 of the judgment, the court did not state whether the Appellant paid rent from 2015 to March 2024, but it considered this explanation when granting the injunctive orders against the Respondent.

15. It was argued that the Tribunal's judgment was specifically related to the reference and did not cover rental arrears from 2015 onward. Counsel highlighted that resolving the dispute over arrears would require land valuation, which is beyond the Tribunal's jurisdiction. Consequently, the Tribunal should not be faulted for not making a ruling on land valuation and the resulting arrears, as these issues are within the jurisdiction of the Environment and Land Court.

16. To buttress his submissions, Counsel relied on the case of Thika Road Gym Limited v TRM Holdings Limited (Civil Appeal E540 of 2021) [2022] KEHC 11132 (KLR) (Civ) (31 May 2022) (Ruling).

17. Regarding the second issue, Counsel submitted that the Respondent should be allowed to distress for rent that continues to accrue because the Appellant is still in possession without paying rent.

18. On the third issue, Counsel argued that there is no reason to disturb the judgment since they have demonstrated that the Appellant has not paid rent.

Analysis and Determination

19. Having considered the Appeal, the entire record and the rival submissions, the following issues fall for determination: -

    a) Whether the BPRT issued a vague, contradictory, or incoherent order on rent payment.

    b) Whether the Tribunal failed to exercise its jurisdiction by failing to assess the rent arrears

20. The principles which guide a first Appellate Court were discussed in the case of Selle & Another Vs Associated Motor Boat Company and Others (1968) 1 EA 123 where the Court of Appeal set out the duty of Appellate Courts as follows;

> " An appeal to this court from a trial court by the High Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate itself and drive 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 finding 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 or if the impression on the demeanour of a witness is inconsistent with the evidence in the case generally."

21. The Appellant argued that the impugned BPRT's judgment, especially order (b), which requires him to pay current or outstanding rent, is unclear, inconsistent, and contradicts the Tribunal's finding that it could not definitively determine the unpaid rent amounts. He contends that this situation exposes him to unnecessary harassment over nonexistent rent arrears.

22. Following the judgment delivered on 24th October 2024, the Appellant filed an application dated 30th October 2024 to review the said judgment. On 7th November 2024, the Tribunal clarified the rent computation, stating that the Appellant should have paid rent from March 2024, when the reference was filed. It also confirmed that the rent was Kshs. 90,000/= and that the outstanding amounts at the time of the directions were slightly over Kshs. 700,000/=.

23. In my considered view, the clarification cured the ambiguity that may have initially arisen from the general language used in Order (b) of the BPRT's judgment.

24. On the second issue, the Appellant argued that the Tribunal did not reconcile rental accounts from 2015 onwards. The Appellant stated that they were served with a notice of tenancy termination on 26th February 2024 and a proclamation notice dated 28th February 2024, which claimed exaggerated rental arrears.

25. In my considered view, the Tribunal was called upon to determine whether the Notice to terminate the tenancy was valid, and whether the Appellant was in arrears.

26. At paragraphs 11 and 12 of its judgement, the Tribunal noted that parcels Ngong/Ngong 90398 and Ngong/Ngong /90397 were transferred to the Respondent in settlement of rent, but the parties disagreed on the value of the properties. They produced competing valuation reports. The Appellant produced a report dated 9th September 2023, by Prof. George Ngugi Njuguna & Associates, valuing the properties at Kshs. 5 million, while the Respondent's report by Advent Valuers Limited dated 30th May 2022 valued them at Kshs. 2 million.

27. At paragraph 27 of its judgement, the Tribunal stated as follows in part:-

> " From the totality of the pleadings and as stated above, I am convinced that on a balance of probability, the Tenant/Applicant has established by way of cogent the grounds for grant of the orders sought as their explanation of how rent arrears was cleared seems plausible."

28. At paragraph 28, the Tribunal stated as follows;

> " This court has no benefit of knowing the status of owing as at now..."

29. In my considered view, the Tribunal was speaking from both sides of the mouth on the issue of whether the Appellant was in arrears, thus creating an ambiguity. Be that as it may, the Tribunal had no jurisdiction to determine the value of the properties, thus rent that had been settled.

30. It is therefore my view that the BPRT was not faced with a question of mere reconciling of arithmetics. It was faced with a jurisdictional issue, to determine the value of the properties that had been said to have been transferred to the Respondent in settlement of arrears. However, instead of holding that it had no jurisdiction to determine the issue, it created an ambiguity.

31. The Appellant has asked the court to set aside order (b) of Hon. Makori's judgment. The order only required the Appellant to pay rent from March 2024 when the reference was filed. I have found that the Tribunal cured the ambiguity through its subsequent orders. Therefore, setting aside order (b) would result in an injustice to the Respondent, who is entitled to the rent owed.

32. A tenant has a duty to pay rent. In Samuel Kipkori Ngeno & another v Local Authorities Pension Trust (Registered Trustees) & another [2013] KEHC 6825 (KLR),it was stated;

> " He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is undeserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due."

33. For clarity, the Tribunal lacked jurisdiction to determine the amount of rent settled or owed by the Appellant from 2015 until the reference was filed, because it would require evaluating the value of the properties claimed to have settled the arrears.

34. In the end, I find that the Appeal is not merited and the same is hereby dismissed with costs.

JUDGMENT SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025.

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HON. T. MURIGI

JUDGE

In the Presence of: -

Kiptoo for the Appellant

Mbatha for the Respondent

Ahmed – Court Assistant