



**Kirui v Kirui (Environment and Land Appeal E006 of 2022)
[2025] KEELC 7295 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND APPEAL E006 OF 2022
LA OMOLLO, J
OCTOBER 23, 2025**

BETWEEN

STANLEY KIBET KIRUI APPELLANT

AND

JOSEAH KIPROTICH KIRUI RESPONDENT

(Being an appeal arising from the ruling of Hon. Patricia May delivered on 8th September, 2022 in the Business Premises Rent Tribunal Case No. E037 of 2021)

JUDGMENT

Introduction.

1. By a Memorandum of Appeal dated 6th October, 2022 the Appellant challenges the decision of Hon. Patricia May delivered on 8th September, 2022 in Business Premises Rent Tribunal Case No. E037 of 2021.

Factual Background.

2. Before the Business Premises Rent Tribunal, the Appellant filed the Notice of Motion application dated 22nd November, 2022 where he sought the following orders;
 - a. That this application be and is hereby certified as urgent and service be dispensed with at the first instance and the same be heard ex parte. (sic)
 - b. That the Respondent/Landlord be and is hereby ordered to accept rent and in default tenant is allowed to deposit rent in Court at the Landlords cost.
 - c. That the Respondent/Landlord and/or servants, agents and/or employees, be and are hereby prohibited forthwith by this Court from unlawfully



intercepting/harassing intimidating and/or evicting, attaching, closing or threatening/interfering/tempering, demolishing disconnecting electricity power, water, disposing by and or in any manner whatsoever and/or howsoever with the Applicant quite (sic) occupation and lawful enjoyment of suit premises at plot no 24 Itembe – Kapkwen Market pending hearing of this case.

- d. That the OCS Bomet Police Station to assist in compliance of these orders and that peace prevails.
 - e. That cost of the application be provided for.
3. In response, the Respondent filed a Replying Affidavit sworn on 11th March, 2023.
 4. Hon. Patricia May the Vice Chair Business Premises Rent Tribunal delivered a ruling on the said application on 8th September, 2022. It was on the following terms:
 - a. The application dated 22nd November, 2021 is dismissed.
 - b. The tenant shall give vacant possession of the premises immediately failure to which the landlord shall evict with the assistance of the OCS Bomet Police Station.
 - c. The landlord is at liberty to hold the goods belonging to the tenant in recovery of rent arrears if the tenant does not settle the same before vacating.
 - d. The reference is settled in similar terms.
 - e. Each party shall bear their own costs.
 5. The Appellant being aggrieved by the said ruling approached this Court by way of appeal.
 6. The appeal was admitted for hearing on 21st January, 2024 and the Court issued directions that the appeal be heard by way of written submissions.
 7. The Appeal was mentioned severally to confirm filing of submissions and on 6th May, 2025 after parties confirmed filing submissions, it was reserved for judgment.

The Appeal

8. The Appellant has set out the grounds of appeal as follows;
 - a. The said Learned Vice Chairperson of the Business Premises Rent Tribunal erred in fact and in law in issuing a lopsided incomplete (sic) and hurried ruling that failed to address itself to the relevant law and material evidence on record.
 - b. That the ruling of the Learned Vice Chairperson of the Business Premises Rent Tribunal failed to take into account the arguments on law submitted by Counsel for the Appellant.
 - c. That the ruling is otherwise not supported by the authorities cited and submitted to the Learned Vice Chairperson of the Business Premises Rent Tribunal.



- d. The said Learned Vice Chairperson of the Business Premises Rent (tenant) (sic) in the absence of a rebuttal by the Respondent (Landlord) and in the absence of any other contradicting evidence. (sic)
 - e. The Learned Vice Chairperson of the Business Premises Rent Tribunal erred and misdirected himself (sic) in fact and in law in dismissing the Appellant's claim against the Respondent.
9. The Appellant prays for orders that;
- a. The appeal be allowed and the orders/ruling of the Vice Chairperson of the Business Premises Rent Tribunal be set aside.
 - b. The Appellant be granted cost of the appeal.

Issues For Determination.

- 10. The Appellant filed his submissions on 4th March, 2025 while the Respondent filed his submissions on 13th May, 2025.
- 11. The Appellant submits that he was the Respondent's tenant on Plot No. 24 Itembe – Kapkwen Market where he operated a hotel business.
- 12. The Appellant also submits that the Respondent gave him a Notice to Vacate dated 17th November, 2021 requiring him to vacate the premises by 1st January, 2022.
- 13. The Appellant further submits that the said notice was not issued in accordance with the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
- 14. It is the Appellant's submissions that upon receipt of the said notice he filed an application before the Business Premises Rent Tribunal seeking orders to stop the eviction and allow him to continue paying rent.
- 15. It is also the Appellant's submissions that as the application was pending before the tribunal, the Respondent harassed and intimidated him while refusing to accept rent.
- 16. The Appellant then sets out the following as his grounds of appeal:
 - a. Whether the tribunal erred in failing to find that the tenancy was a controlled tenancy and therefore protected under Cap 301.
 - b. Whether the tribunal erred in failing to invalidate the defective notice to vacate issued by the Respondent.
 - c. Whether the tribunal erred in failing to grant injunctive orders despite the clear demonstration of irreparable harm and the landlord's failure to follow due process.
 - d. Whether the Tribunal erred in failing to appreciate that the Respondent was estopped from evicting the Appellant in violation of statutory protections.
- 17. The Appellant relies on Section 2(1)(a) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* and submits that in a controlled tenancy, there is no written tenancy agreement.
- 18. The Appellant also submits that the parties herein did not enter into any written agreement and therefore the tenancy was controlled.



19. The Appellant further submits that he (Appellant) was entitled to statutory protections and the Respondent was bound to follow the legal procedures set out in the Act before terminating the tenancy.
20. The Appellant relies on the judicial decision of *Manaver N. Alibhai t/a Diani Gallery v South Coast Holdings Limited* [2020] eKLR and submits that a controlled tenancy can only be terminated by issuance of a notice that strictly complies with the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.
21. The Appellant relies on Section 4(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* and submits that a notice to terminate a controlled tenancy must be in the prescribed form and must also comply with the procedural requirements under the Act.
22. The Appellant submits that the prescribed notice must be filled using the form provided under the schedule and be duly stamped at the Business Premises Rent Tribunal Registry upon payment of the requisite fees.
23. The Appellant relies on the judicial decision of *Lall vs Jeypee Investment Ltd* [1972] EA 512 and submits that the notice issued by the Respondent dated 17th November, 2021 failed to comply with the statutory requirements and it was therefore invalid.
24. The Appellant relies on *Giella vs Cassman Brown & Co. Ltd* (1973) EA 358 and submits that he demonstrated that he had a prima facie case as he was a protected tenant and the Respondent acted unlawfully by issuing the notice and harassing him.
25. The Appellant also submits that he demonstrated irreparable harm as his hotel business was his primary source of livelihood.
26. The Appellant further submits that the eviction subjected him to financial hardship that could not be adequately compensated by an award of damages.
27. It is the Appellant's submissions that the balance of convenience lies in his favor as he was in lawful occupation of the premises and he met all his rental obligations.
28. It is also the Appellant's submissions that the tribunal failed to appreciate those factors and wrongly (sic) dismissed the Appellant's submissions.
29. It is further the Appellant's submissions that the law provides that Landlords must follow due process when seeking to recover possession of their premises.
30. The Appellant submits that the Respondent's conduct amounted to unlawful eviction, which the tribunal failed to adequately address.
31. The Appellant concludes his submissions by urging the Court to allow the appeal, set aside the ruling of the Tribunal and allow his application as prayed.
32. The Appellant also seeks for costs of this appeal and the proceedings before the Tribunal.
33. The Respondent submits on the following issues;
 - a. Whether the unopposed notice issued by the landlord is valid, binding and enforceable.
 - b. Whether the tenant's appeal ought to be allowed. (sic)
 - c. Costs of this suit.



34. On the first issue, the Respondent relies on the judicial decision of John Wanyange Mwangi v Duncan Ng'ang'a Kimotho (BPRT NO. 74 of 2021) and submits that he (Respondent) issued the Appellant with a notice to terminate tenancy dated 17th November, 2021.
35. The Respondent also submits that the said notice was to take effect on 1st January, 2022.
36. The Respondent further submits that he terminated the lease because he intended to renovate and upgrade the premises which he could not do without first obtaining vacant possession.
37. The Respondent relies on Section 4(2) & (5) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), the judicial decision of Paul Lobo t/a Lewis Lobo Hotel v Maria Gatitu and Dominic Ntongai (citation not given) in support of his submissions.
38. On the second issue, the Respondent relies on the judicial decision of Beehive Resort v Joram Muya Waweru BPRT Case No. 154 of 2020 consolidated with BPRT No. 1 of 2021 and submits that he initiated the termination of the controlled tenancy in a procedural manner and the ruling delivered on 8th September, 2022 should be upheld as it took into consideration all the facts of the case.
39. The Respondent concludes his submissions by urging the Court to dismiss the appeal.

Analysis And Determination

40. The only issue that arises for determination is whether the Appellant's appeal has merit.
41. The role of the Appellate Court was stated by the Court of Appeal in the judicial decision of Gitobu Imanyara & 2 others Vs Attorney General [2016] eKLR. It was held as follows;

“An appeal to this Court from a trial by the High Court is by way of 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 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 allowances in this respect.”
42. In Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR the Court held as follows;

“This being a first appeal, we are reminded of our primary role as a first Appellate Court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”
43. This Court notes that the Appellant has set out the following grounds of appeal in his submissions;
 - a. Whether the tribunal erred in failing to find that the tenancy was a controlled tenancy and therefore protected under Cap 301.
 - b. Whether the tribunal erred in failing to invalidate the defective notice to vacate issued by the Respondent.
 - c. Whether the tribunal erred in failing to grant injunctive orders despite the clear demonstration of irreparable harm and the landlord's failure to follow due process.



- d. Whether the Tribunal erred in failing to appreciate that the Respondent was estopped from evicting the Appellant in violation of statutory protections.
44. The grounds of appeal in the Memorandum of Appeal dated 6th October, 2022 have been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;
- a. The said Learned Vice Chairperson of the Business Premises Rent Tribunal erred in fact and in law in issuing a lopsided incomplete (sic) and hurried ruling that failed to address itself to the relevant law and material evidence on record.
 - b. That the ruling of the Learned Vice Chairperson of the Business Premises Rent Tribunal failed to take into account the arguments on law submitted by Counsel for the Appellant.
 - c. That the ruling is otherwise not supported by the authorities cited and submitted to the Learned Vice Chairperson of the Business Premises Rent Tribunal.
 - d. The said Learned Vice Chairperson of the Business Premises Rent (tenant) (sic) in the absence of a rebuttal by the Respondent (Landlord) and in the absence of any other contradicting evidence. (sic)
 - e. The Learned Vice Chairperson of the Business Premises Rent Tribunal erred and misdirected himself (sic) in fact and in law in dismissing the Appellant's claim against the Respondent.
45. It is important to note that the grounds of appeal as set out in the Appellant's submissions are not the same as those contained in the Memorandum of Appeal dated 6th October, 2022.
46. The Court of Appeal in *Coastal Bottlers Limited v George Karanja* [2015] eKLR held as follows;
- “It is trite law that pleadings are not only binding on the Court but on the parties as well (see. *Galaxy Paints Company Ltd v Falcon Guards Ltd*, Civil Appeal No. 219 of 1998, where this Court held that:-
- “The issues for determination in a suit generally flowed from the pleadings and the trial Court could only pronounce judgment on the issues arising from such issues as the parties framed for the Court's determination.”
- This decision was also adopted with approval by this Court in *William Muthee Muthami v Bank of Baroda* [2014] eKLR), when it restated the principle thus:-
- “It is a firmly established rule of evidence that the evidence produced in Court to prove a claim must flow from the pleadings.”
- This applies not only to pleadings and proceedings before the trial Court, but to appeals as well. An appellate Court is bound by the issues pleaded in the memorandum of appeal and ought not address any issues extraneous to the grounds pleaded (see. *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR).” (Emphasis mine)



47. In the judicial decision of Amoth & 2 others v Duncan & 10 others (Environment and Land Appeal E002 of 2023) [2024] KEELC 1340 (KLR) (14 March 2024) (Judgment) the Court held as follows;

“...The issue of the trial Court’s jurisdiction has been raised in the appellants’ submissions and not in their grounds of appeal.

17. It must be noted the appellants were bound by grounds postulated in their memorandum of appeal and are not allowed to travel beyond them by sneaking new grounds in their submissions. This Court will disregard this limb of their submissions. See *Kenya Hotels Ltd vs. Oriental Commercial Bank Ltd (Formerly known as The Delphis Bank Limited)* [2019] eKLR.”

48. As was held in the above cited judicial decisions, an Appellant is bound by the Grounds of Appeal in his/her Memorandum of Appeal and any new issues raised in submissions are best disregarded.

49. I shall therefore disregard the grounds of appeal as set out in the Appellant’s submissions.

50. I have taken into consideration the five grounds on the Appellant’s Memorandum of Appeal and I am of the view that the single issue that arises for determination is

Whether, the Tribunal failed to consider the relevant law and the Appellant’s submissions in its ruling delivered on 8th September, 2022.

51. The Appellant submits that he was a controlled tenant.

52. The Appellant also submits the Respondent sought to terminate the said tenancy and issued a Notice dated 17th November, 2021.

53. The Appellant further submits that the notice issued on 17th November, 2021 did not comply with Section 4(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* and it was therefore null and void.

54. It is the Appellant’s submissions that the Respondent unlawfully harassed and evicted him and the Tribunal ought to have issued the injunction sought.

55. In response, the Respondent admits that the tenancy between him and the Appellant was controlled.

56. The Respondent also submits that he sought to terminate the said tenancy vide the notice dated 17th November, 2021 as he intended to renovate the building.

57. The Respondent further submits that he initiated the termination of the controlled tenancy in a procedural manner and he therefore seeks that Appellant’s appeal be dismissed with costs.

58. The Business Premises Rent Tribunal in its decision delivered on 8th September, 2022 held as follows;

“ 10. The notice was expressed to take effect on 1st January, 2022 and is duly signed by the Landlord’s representative. The Landlord stated that they intended to carry out renovation on the demised premises so as to improve their value (sic).

11. In view of the foregoing, all the Landlord is required to do is to demonstrate a settled intention to occupy the premises held by the Tenant as was held in *Eldomart Holdings Limited vs The Ticket Company Limited* [2016] eKLR.



12. On refusal to accept rent by the Landlord, it came out clearly in the replying affidavit that there was no proof of the landlord refusing to accept rent. The rule of evidence is clear that “he who alleges must prove” and this maxim was in favour of the landlord herein. The maxim has been grounded in law under Section 107 of the Law of Evidence (sic)...
 13. No documentary evidence was produced to show that the rent was paid to the landlord but the same was rejected even where the tenant had the discretion to do so through their affidavit. The allegations therefore remained mere allegations. Unsubstantiated. (sic)
 14. The tenant also did not challenge the assertion that the landlord had also issued similar notices to the other tenants...
 15. I have examined the notice issued by the landlord. The same is wanting in form. Article 159 of *the Constitution* requires that we perform justice without being tied down by technicalities. Whilst Section 4 of Cap 301 is couched in mandatory terms, Section 12 of the said statute grants the tribunal the discretion to grant orders to ensure that the ends of justice are met. Owing to the effluxion of time and the increasing inflation, I am inclined to allow the notice as the landlord has proven that they (sic) need to carry out renovation. It is in the best interest of both parties.
 16. in conclusion therefore, the following final orders commend to me;
 - a. The application dated 22nd November, 2021 is dismissed.
 - b. The tenant shall give vacant possession of the premises immediately failure to which the landlord shall evict with the assistance of the OCS Bomet Police Station.
 - c. The landlord is at liberty to hold the goods belonging to the tenant in recovery of rent arrears if the tenant does not settle the same before vacating.
 - d. The reference is settled in similar terms.
 - e. Each party shall bear their own costs.
59. Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* provides as follows;
- “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.
 - (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.



- (3) A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord in the prescribed form.
- (4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein:
 Provided that—
 - (i) where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
 - (ii) where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;
 - (iii) the parties to the tenancy may agree in writing to any lesser period of notice.
- (5) A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.
- (6) A tenancy notice may be given to the receiving party by delivering it to him personally, or to an adult member of his family, or to any other servant residing within or employed in the premises concerned, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.”

60. The Court of Appeal in *Munaver N Alibhai t/a Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] KECA 166 (KLR) held as follows;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the grounds on which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”[Emphasis Mine]



61. As was held in the above cited judicial decision, a controlled tenancy can only be terminated according to the provisions of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
62. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* provides that a notice to terminate is issued in the prescribed form and it shall not take effect earlier than two months from the date of receipt by the tenant.
63. In the present matter, it is not disputed that the tenancy in question was a controlled tenancy. It is also not disputed that the Respondent issued the Appellant with a Notice to Terminate the tenancy dated 17th November, 2021. It is further not disputed that the said notice was to take effect on 1st January, 2022.
64. It is evident that the notice dated 17th November, 2021 did not comply with the provisions of Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* which require that such a notice takes effect two months after receipt by the tenant.
65. On page 3 of the ruling delivered by the tribunal, the Vice Chair Business Premises Rent Tribunal states at paragraph 15 that the notice issued by the Respondent was wanting in form. The Vice Chair concedes that the provisions of Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* are mandatory but nonetheless relies on Article 159 of *the Constitution* in allowing the Landlord's notice.
66. In the judicial decision of *Mutura v Kagombe* [2024] KEELC 5089 (KLR) the Court cited with approval the judicial decision of *Lall vs Jeypee Investments Ltd Nairobi HCCA No.120 of 1971 (1972) EA 512* where the Court held as follows;

“The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* is an especially enacted piece of legislation which creates a privileged class of tenants for the purpose of affording them the protection specified by its provisions against ravages of predatory landlords. Such protection can only be fully enjoyed if the provisions of the Act are observed to the letter otherwise the clearly indicated intention of the legislature would be defeated. In order to be effective in this fashion, the Act must be construed strictly no matter how harsh the result”. (Emphasis mine)
67. In the above cited judicial decision, the Court held that the provisions of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* must be construed strictly for the reason that the law was enacted to protect tenants.
68. It is therefore this Court's view that the Vice Chair of the tribunal erred in allowing the Landlord's notice to take effect in complete disregard of the mandatory provision of the law i.e. Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. Invoking of Article 159 of *the Constitution* of Kenya, 2010 to aid in violation of the rights of the Appellant was not only flawed but cruel.

Disposition.

69. In the result, the appeal succeeds. Consequently, the ruling delivered on 8th September, 2022 by the Business Premises Rent Tribunal in Case No. E037 of 2021 is hereby set aside.
70. The Appellant shall have costs of the appeal.
71. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 23RD DAY OF OCTOBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of:

Parties- Absent

Court Assistant; Mr. Joseph Makori.

-----ELCA

CASE NO. E006 OF 2022 [KERICHO] Page 12 of 12

