



REPUBLIC OF KENYA



KENYA LAW
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**Karomo v Kiarie (Environment and Land Appeal E057 of 2023)
[2025] KEELC 7257 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7257 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E057 OF 2023**

JG KEMEI, J

OCTOBER 21, 2025

BETWEEN

KINUTHIA KAROMO APPELLANT

AND

STEPHEN JULIUS KIARIE RESPONDENT

(Being an appeal against the judgment of Hon Gakubi Chege, Vice Chair of the Business Premises Rent Tribunal, delivered on 24/11/23 in BPRT No E004 of 2021)

JUDGMENT

1. This appeal traces its origin to a Lease Agreement (hereinafter referred to as “the Agreement”) entered into by the parties in this suit for a period of five years, from 1/11/2016 to 31/12/2021, concerning a piece of land known as Plot No 5620 in Ruaka, Kiambu County.
2. On 19/4/21, the Landlord issued the tenant with a notice to terminate the lease on two grounds; firstly, non-payment of rent in the sum of Kshs 645,000/- and secondly, for subleasing the premises to third parties without the consent of the Landlord.
3. Following the notice aforesaid, the tenant filed a reference before the tribunal opposing the termination of the lease dated 19/4/21.
4. On application, the tribunal rendered a Ruling on 20/8/21, granted orders restraining the Landlord from evicting the tenant pending the hearing and determination of the tenant’s reference.
5. Upon hearing the reference, the tribunal rendered its judgment on 24/11/23 in the following terms;
 - a. The landlord shall pay Kshs 3,934,140/- to the tenant as compensation for the improvements erected on L.R No 5620, Ruaraka, Kiambu County by the latter.



- b. The tenant shall pay a sum of Kshs 640,000/- being rent arrears owed to the landlord, which shall be offset against the amount of compensation awarded to him, leaving the balance at Kshs 3,294,140/-.
 - c. Each party shall meet its own costs of the suit.
6. Aggrieved by the judgment, the Landlord filed this appeal and raised 12 grounds condensed into three grounds as follows;
 - a. Whether the Tribunal erred in law and fact by awarding compensation for temporary structures erected by the tenant, after the tenancy had lawfully terminated, and in the absence of any contractual agreement for such compensation, where the landlord permitted removal of the structures upon settlement of rent arrears. See grounds Nos 1,2,3,5,7,8,9,12
 - b. Whether the Tribunal erred in law and fact in disregarding the tenant's material breach as the cause of intended termination. See ground Nos 4,9 & 12
 - c. Whether the valuation report was misconceived, baseless and exaggerated. See grounds Nos 6,10,11 & 12.
7. The appellant filed submissions dated the 26/8/25
8. With respect to ground No 1 above, counsel for the Landlord submitted that Section 12(1) (l) of the Landlord & Tenant (Shops Hotels and Catering Establishments Act (LLA) gives power to the court to award compensation upon the existence of a controlled tenancy limited to improvements undertaken with the landlord's consent.
9. The tribunal was faulted for failing to consider the circumstances that made compensation unlawful and unfair; tenancy had ended due to the affluxion of time; the respondent did not seek compensation as a relief in the reference; there were no contractual provisions for compensation; the structures were temporary and removable, and the landlord had offered to permit their removal subject to the settlement of the outstanding rent.
10. That the initial relief sought by the tenant was for injunctive relief, and the relief of compensation did not form part of the initial dispute between the parties. It was introduced after the termination of the lease on 21/12/2021. Upon the cessation of the tenancy between the parties, the Court had no jurisdiction to entertain the dispute further. The case of Owners of Motor Vessel Vs Caltex Oil Kenya (1989) KECA 48 KLR was cited to the effect that when a court lacks jurisdiction, it must immediately cease proceedings.
11. The tribunal was further faulted for holding in its ruling of 17/3/2023 that it had jurisdiction to determine compensation payable to the tenant. The tribunal erred by allowing the suit to morph from a termination of tenancy dispute to that of compensation for temporary structures. The tribunal therefore reframed the dispute and ended up issuing orders that had not been sought for.
12. It was further emphasised that the initial reference before the Tribunal was primarily concerned with the validity of the termination notice and the Respondent's non-payment of rent. The Tribunal's mandate, under the Act is delineated. While it has powers concerning controlled tenancies, these powers do not extend to compelling a landlord to purchase a tenant's temporary structures in the absence of an agreement, particularly when the tenant is in substantial arrears and the landlord is willing to allow removal upon settlement of rent arrears.



13. On the 2nd ground the Landlord submitted that Section 12(1)(e) of the Act empowers the Tribunal:

“...to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy.”
14. Further, section 12(1)(h) of the Act empowers the Tribunal to permit the levy of distress for rent.
15. That, despite the above provisions, the tribunal disregarded the breach of the tenant's obligations to pay rent. That the tenant was allowed to benefit from his own breach of his rent obligations by insisting that he be paid compensation for the temporary structures.
16. Finally, it was submitted that the tribunal erred in fact by relying on a valuation report that was misconceived, baseless, and exaggerated, despite the Appellant's position that he was not interested in acquiring the temporary structures but in enforcing his statutory right to recover rent.
17. On the part of the Respondent, it was submitted that, when signing the lease agreement, the tenant improved the leased premises by establishing a car wash and shops for subletting on the undeveloped land, and that, upon the lease's termination, the tenant was to remove these developments. The landlord took possession of the suit premises in January 2022 and has neither compensated the tenant nor allowed him to remove or demolish them.
18. That since the landlord consented to the development of the said premises, the court was correct to grant compensation for the said developments to the tenant.
19. It was submitted that the landlord failed to provide a counter-opinion in the form of a valuation report, and he cannot be heard to impugn the only expert's opinion placed before the court. The court cannot be faulted for relying on the same.
20. Having considered the appeal, the written submissions, and the material placed before me, the key issues are; whether the tribunal had jurisdiction to enter into the question of compensation after the tenancy had been terminated?
21. It is not in dispute that the parties entered into a lease agreement for a period of 5 years from 1/11/2016 to 31/12/2021 at an agreed rent of Kshs 15000/- payable quarterly. The rent was to be increased every 2.5 years. The tenant was to develop and operate a car wash as well as shops for subletting.
22. The landlord has alleged it that the rent was increased to Kshs 30,000/- in the sixth month, a position that the tenant has vehemently disputed.
23. It is not disputed that on 19/4/21 the landlord issued a termination notice demanding the tenant to vacate the suit land due to non-payment of rent and for subletting the premises to third parties without the landlord's consent.
24. In response, the tenant brought a reference before the tribunal seeking to challenge an illegal termination. The court issued temporary orders restraining the landlord from evicting the tenant.
25. It is not in dispute that the lease expired by effluxion of time at the end of December 2021.
26. It is not in dispute that the relationship between the tenant and the landlord was that of a controlled tenant in line with the provisions of Section 2 of the LLA.

provides as follows;



27. In the case of Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] (KECA) 48 KLR, the Court held that jurisdiction is everything, and once a court or tribunal finds it lacks it,
28. I have examined the record and the parties openly informed the court that the premises had been taken over by the landlord upon the termination of the lease, and it was incumbent on the tribunal to cease its proceedings because, at that moment, the tribunal's jurisdiction was no longer applicable. It is the view of the court that, should there be any other claims, the parties should approach the appropriate legal forums for any other relief.
29. I concur with the decision of the court in Ndege v Mutarura & another (Environment and Land Appeal E010 of 2023) [2024] KEELC 6627 (KLR) (24 September 2024) (Judgment) where the learned Judge held:

“I cannot put it any better. The moment the learned Vice-chair of the Tribunal acknowledged that the suit premises had changed hands, he ought not to have gone any further. The Tribunal lacked the jurisdiction to entertain the matter in view of the fact that the relationship of landlord and tenant was no more.”
30. On that ground, I find that the appeal succeeds, and I order that the decision of the tribunal rendered on 24/11/23 be set aside in its entirety.
31. I order each party to bear their costs.
32. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Ms Chebet Kirui for the Appellant
2. Ms Magoma for the Respondent
3. CA- Ms Yvette Njoroge

