



REPUBLIC OF KENYA



Shah & 2 others v International Electricals (K)Limited (Environment and Land Case E205 of 2024) [2025] KEELC 7377 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7377 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E205 OF 2024**

TW MURIGI, J

OCTOBER 24, 2025

BETWEEN

BHARAT JIVRAJ SHAH 1ST PLAINTIFF

MUKTABEN AMRITLAL SHAH 2ND PLAINTIFF

MINAKUMARI BHARAT SHAH 3RD PLAINTIFF

AND

INTERNATIONAL ELECTRICALS (K)LIMITED DEFENDANT

RULING

1. The Plaintiffs instituted this suit vide a Complaint dated 4th May 2024 seeking the following orders:-
 - a) A finding that the controlled tenancy between the Plaintiffs and Defendant terminated.
 - b) An order for eviction of the Defendant from the property known as Nairobi/Block 10/791.
 - c) An order for payment of rent arrears in the sum of Kenya Shillings Two Hundred and Eighty Thousand with interest until payment in full.
 - d) An order for mesne profits in the sum of Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000/=) per month from May 2024 until the date of delivery of judgment with interest until payment in full.
2. The Plaintiffs contend that they are the registered owners of Nairobi/Block 10/791. They claimed that the Defendant has been in occupation of the suit parcel as a controlled tenant but by a notice dated the 20th March 2024, the Plaintiffs notified it of their intention to terminate the tenancy but since it did not file a reference at the Business Premises Rent Tribunal, the controlled tenancy terminated.
3. The Defendant filed a statement of defence dated 9th July 2024, arguing that the termination notice was incurably defective for failure to comply with the mandatory 2-month statutory notice



period contemplated under Section 4(4) of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act.

4. The Defendant raised a Preliminary Objection challenging the jurisdiction of this court to hear and determine the dispute.
5. The preliminary objection was canvassed by way of written submissions.

The Defendant's Submissions

6. The Defendant filed its submissions dated 19th May 2025.
7. On behalf of the Defendant, Counsel submitted that the landlord's notice dated 20th March 2024, which the Plaintiff is seeking to enforce offends Section 4 (4) of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act. It was further submitted that the notice is incurably defective and is not enforceable by the Tribunal or by this Honourable Court.

The Plaintiffs Submissions

8. The Plaintiffs filed their submissions dated 3rd June 2025.
9. On behalf of the Plaintiffs, Counsel submitted that the Preliminary Objection is not based on a pure point of law as the court would have to look into the pleadings to determine whether the notice is defective. Counsel maintained that the Notice was compliant with the law. Counsel relied on the case of *Oraro v Mbaja* (2015) eKLR 141.

Analysis And Determination

10. The law on preliminary objections is well settled. A preliminary objection must be on a pure point of law.
11. In *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd* (1969) EA 696, Law JA stated as follows:-

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

12. Further on Sir Charles Newbold JA stated;

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”



13. In Oraro Vs Mbaja (2005) eKLR Ojwang J (as he then was) described it as follows;

I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

14. For a preliminary objection to be valid, it must be on a point of law and must be founded on facts that are not in dispute. It should not be proved through facts or evidence or deal with disputed facts.

15. The Defendant’s objection is premised on the allegation that the notice issued by the Plaintiffs is invalid as it offends Section 4 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), which clearly provides for the requirements of a tenancy notice and termination of a controlled tenancy.

16. To ascertain the Defendant’s allegation on the Notice issued by the Plaintiff seeking to terminate his tenancy did not comply with Section 4(4) of the Landlord and Tenants (Hotel and Catering Establishment Act) the notice period under the aforementioned provision, the court would have to examine the evidence to determine facts, including the actual date the notice was served and whether the two-month period was observed. This would mean that it would go beyond the scope of a pure point of law as defined in the aforementioned case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] 1 EA.

17. It is not in dispute that the tenancy between the parties is a controlled tenancy as defined under Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#).

18. Section 4(4) of the aforementioned Act provides that if the tenant does not challenge the notice by way of a reference to the Tribunal within one month, the tenancy is deemed terminated as per the notice. Since the Tribunal’s jurisdiction is invoked only upon the filing of a reference in response to a termination notice the Plaintiff is in my view, at liberty to approach this Court to enforce its proprietary rights.

19. In the end, I find that the preliminary objection is devoid of merit and the same is hereby dismissed.

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

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T. MURIGI

JUDGE

In The Presence Of:-

Ms Ithondeka for the Plaintiff

Mburukwa holding brief for Kinyua for the Defendant

Ahmed – Court assistant.

