



Republic v Chairman, the Business Premises Rent Tribunal at Nairobi; Wanyonyi (Interested Party); Obwari Enterprises Limited (Ex parte Applicant) (Environment and Land Judicial Review Case E002 of 2023) [2025] KEELC 5684 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5684 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2023**

**JG KEMEI, J
JULY 31, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**CHAIRMAN, THE BUSINESS PREMISES RENT TRIBUNAL AT
NAIROBI RESPONDENT**

AND

BERNARD WANYONYI INTERESTED PARTY

AND

OBWARI ENTERPRISES LIMITED EX PARTE APPLICANT

JUDGMENT

1. Pursuant to the leave granted by this Court on 8/2/23, the ex parte Applicant filed its substantive motion of 27/2/23 and sought the following orders;
 - a. An order of certiorari do issue to quash the order of the Business Rent Tribunal Premises Tribunal (BPRT) at Nairobi dated the 23/1/23 in BPRT No 905 of 2019 – Bernard Wanyonyi Vs Obwari Enterprises Limited.
 - b. An order of prohibition to bar the BPRT Tribunal at Nairobi from further having the conduct of the case.
 - c. Costs be provided for.
2. The application is supported by the statutory statement accompanying the application for leave dated the 1/2/23, the verifying affidavit of Emily Kerubo sworn on 1/2/23 and the grounds adduced thereto.



3. The *ex parte* Applicant deponed that it and the Interested Party were before the Tribunal in BPRT 905 of 2020 as landlord and tenant respectively. On 23/1/23 the Tribunal determined that the said Interested Party had ceased to be in a landlord-tenant relationship with the Applicant hence divesting the Tribunal of the jurisdiction to entertain the dispute any further. That notwithstanding the Tribunal has proceeded to entertain the dispute further and assigned the matter a hearing date for 20/2/23. The Court was asked to grant orders to arrest the further conduct of the case by the Tribunal as it is devoid of jurisdiction and legality.
4. In a verifying affidavit sworn by Emily Kerubo Obondi, on behalf of the *Ex parte* Applicant, she regurgitated the contents of the statutory statement and urged the Court to allow the application.
5. The application is opposed by the Interested party vide his replying affidavit sworn on 30/11/23 where he deponed that; his business premises were vandalized and his goods removed by the *ex parte* Applicant and other related parties without his consent or notice.
6. He cited the source of the disagreement with the *ex parte* Applicant as its ; failure to repair the sewer system; refusal to issue him with rent receipts in its name; refusal to give credit for the rent paid when the building was in disuse due to the absence of water and sewerage services and a faulty door between the period of January 2019 and October 2002; refusal to return all his goods ; and false affidavits sworn by the *ex parte* Applicant and its agents on what has transpired between them as respecting the tenancy relationship and that he terminated the tenancy in July 2019 a fact that they know to be false while the *ex parte* Applicant had been receiving rent from him as can be seen in the Mpesa statements marked as P1-P9 annexed thereto.
7. In conclusion the interested party argues that the Tribunal has jurisdiction to hear and determine his complaint arising from the tenant- landlord relationship and in particular to award compensation for the loss incurred arising from the unlawful termination of the controlled tenancy in respect of goodwill and improvements carried out by the tenant with the *ex parte* applicant's consent. The Court was urged that this application is baseless and ought to be dismissed to pave way for the Tribunal hear and determine the dispute.
8. The Respondent opposed the application vide its Replying Affidavit sworn by its Chairman Nguthari Cyprian Mugambi on 25/10/25 where he deponed that the Tribunal made further orders to the effect that the tenant is not in the premises and therefore the Tribunal has been robbed of jurisdiction and that the tenant could apply for appropriate remedies in another forum.
9. The Applicant submitted that according to the inspection report adopted by the Tribunal, the Tribunal ordered as follows;

“ the tenant is no longer in the premises and is at liberty to file for damages in 14 days; the landlord has 14 days to respond and that hearing is on 20/2/23”.
10. That arising from the said findings it follows that the landlord tenant relationship no longer existed and consequently the Court lacked jurisdiction to continue entertaining the suit. That as at the time the IP filed the complaint at the Tribunal, it had ceased to be a tenant in the premises. That the act of continuing to entertain the suit by issuing a hearing date is an act that is outside its powers and the moment it received and adopted the inspection report which showed that the IP was no longer in the premises, the Court ought to have downed its tools.
11. The Tribunal was faulted for acting in excess of its powers conferred on it by statute and in contravention of the provisions of Section 7(2) of the Fair Administrative Actions Act.



12. The Court was asked to be guided by the decision of the Court in Chief Executive Officer, The Public Service Superannuation Fund Board of Trustees Vs CPF Financial Services Limited & 2 others (2022) KECA 982 KLR which reiterated the relevant grounds in granting judicial review orders as; illegality, unreasonableness and irrationality and ultra vires.
13. It was further stated that in order to succeed in an application for judicial review, the Applicant has to show that the decision or act complained about is tainted with illegality, irrationality and procedural impropriety.
14. In conclusion the Applicant urged the Court that the Tribunal acted outside its jurisdiction in its orders dated the 23/1/23. The Court was urged to allow the application.
15. In its further submissions dated the 4/2/25 the Applicant reiterating its earlier position and added that it was not notified of the further orders of the Tribunal issued of 20/2/23.
16. Neither the Respondent nor the IP filed any written submissions despite directions having been taken and parties been accommodated to do so by the Court.

Analysis and determination

17. The key issue for determination is whether the application is merited / overtaken by events.
18. Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* cap 31 defines controlled tenancy as:
 - a) A tenancy of a shop, hotel or catering establishment-
 - b) Which has not been reduced into writing; or
 - c) Which has been reduced into writing and which-
 - i. Is for a period not exceeding five years; or
 - ii. Contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - iii. Relates to premises of a class specified under subsection 2 of this section.

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;
19. It is not disputed that the Applicant and the Interested Party enjoyed a tenant landlord relationship. According to the reference filed by the Interested Party to the Tribunal dated the 3/10/2019, his main complaint was that the Applicant had broken into his shop, carried away some of the goods and locked the room denying him of access to the premises.
20. In his Replying Affidavit sworn on the 30/11/23 the Interested Party laid bare the nature and scope of the source of the break down of the tenant landlord relationship some of which touched on lack of water and sewerage services, non-receipted rent etc. It was his case that he was removed without any cause by the applicant.
21. The record bears testimony that an inspection report ordered by the Tribunal and signed by one Kelvin Busuku stated that the house was empty apart from tables and that there was a third party who claimed to be the new tenant. More importantly that the Interested Party was no longer in the premises. The report was carried out in the presence of the Ms Katile for the Landlord and the Interested Party in person. This report has not been challenged.



22. On the 23/1/23 the suit came up before the Tribunal that made the following orders;
- a. The tenant is no longer in the premises (report) liberty to file for damages in 14 days
 - b. Landlord has 14 days to respond
 - c. Hearing on 20/2/23
23. It is these orders of the Court that the Applicant has argued that the Court made in excess of the its jurisdiction.
24. In the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others (2012) eKLR it was held that:

A Court’s jurisdiction flows from either *the constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

25. The Jurisdiction of the Court is scoped out in Section 12 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
26. The jurisdiction of BPRT Tribunal was aptly discussed in the case of Republic vs Business Premises Rent Tribunal & Another Ex- Parte Albert Kigera Karume [2015] eKLR which cited with approval the case of Re Hebtulla Properties Ltd [1979] KLR 96; [1976-80] 1 KLR 1195 where the Court dealt with the provisions of section 12 of Cap 301 and stated as follows:

“The Tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied... The powers of the Tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the Tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under section 12(1)(a) to (n). The Act was passed so as to protect tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the Tribunal is to hear and determine references made to it under section 6 of the Act. Section 9 of the Act does not give any powers to the Tribunal, but merely states what the Tribunal may do within its area of jurisdiction..... It would be erroneous to think that section 12(4) confers on the Tribunal any extra jurisdiction to that given by and under the Act elsewhere...Section 12(4) of the Act must be read together with the rest of the Act and, when this is done it becomes apparent that the complaint must be about a matter the Tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy.... The Act uses the words “any complaint” and the only qualification is that it must be “relating to a controlled tenancy”.

27. I agree with the decision of the Court in Pritam vs. Ratilal and Another Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore, the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been



ended, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

28. It therefore follows that where a Landlord – tenant relationship is no longer in existence the Tribunal has no jurisdiction on the matter.
29. I have perused the orders of the Court issued on the 20/2/23 where the Court stated as follows;

‘the tenant is not in the premises; this Tribunal has been robbed of jurisdiction. The tenant can apply in another forum’
30. That being so, I find that there is no decision to quash, the respondent having made another decision that supercedes what was to be quashed. It follows that by the time this application was filed in Court on 27/2/23 the impugned decision of 23/1/23 had been overtaken by events noting that the Court had proceeded to pronounce itself in the decision of 20/2/23 to the effect that it had no jurisdiction to proceed with the matter and advised the tenant to seek remedy in another forum.
31. Final orders for disposal
 - a. For those reason, I find the application is overtaken by events and for purposes of completeness of the record, it is hereby dismissed.
 - b. I make no orders as to costs.
32. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Ms Kemunto for the Exparte Applicant

NA for the Respondent

Interested Party – present in person

CA – Ms Yvette

