



**Gicheru & another v Wani (Civil Appeal E543 of 2024)  
[2025] KEHC 16233 (KLR) (Civ) (10 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16233 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E543 OF 2024**

**WM MUSYOKA, J**

**NOVEMBER 10, 2025**

**BETWEEN**

**JULIET MUTHONI GICHERU ..... 1<sup>ST</sup> APPELLANT**

**SAMUEL MBURU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JAMES WANI ..... RESPONDENT**

*(Appeal from the judgement and decree, of Hon. PW Wasike, Principal Magistrate, PM, on 28th March 2024 in Milimani MCCC No. E217 of 2021)*

**JUDGMENT**

1. The suit at the trial court was by the respondent against the appellants. It sought to recover rent arrears, and special damages related to repairs and restoration of the premises to the state they were in when the appellants took possession or occupation. The rent outstanding was said to be Kshs. 3,467,580.00; damages for repairs and renovations Kshs. 296,970.00; and Kshs. 105,000.00 for outstanding water and electricity utility bills; making a total claim of Kshs. 3,869,630.00.
2. The claim was resisted by the appellants. The 1<sup>st</sup> appellant admitted occupation of the premises in question, but disputed certain aspects of the claim, and put the respondent to strict proof. The 2<sup>nd</sup> appellant asserted that he never was a tenant on the subject property.
3. A trial was conducted. The respondent testified, and so did the 2<sup>nd</sup> appellant. Judgment was delivered, on 28<sup>th</sup> March 2024. The trial court awarded Kshs. 3,007,580.00, in respect of the rent arrears, and Kshs. 102,364.70, for the electricity bill. The awards were subject to interests.



4. The appellants were aggrieved, hence the appeal. They complained about the trial court considering evidence that had not been admitted, shifting the burden of proof to them, and making presumptions of law and fact not in evidence.
5. Directions were given, on 2<sup>nd</sup> May 2025, for canvassing of the appeal, by way of written submissions. Both sides have complied. I have seen and read their respective written submissions.
6. I will dispose of this appeal on the basis of an issue that is not raised in the memorandum of appeal, nor in the written submissions.
7. My understanding is that the respondent was the owner of a property known as LR No. 37/34/895, Lavington, Nairobi. Some structures stood on that property or premises, which the respondent leased, rented or let out to the appellants. That created a lease or tenancy, which permitted the appellants to occupy the land in question, at some consideration. The dispute is over that consideration, which, it is alleged, the appellants did not pay, despite occupying the premises.
8. As this is a dispute over occupation of land, I would not have any jurisdiction to handle an appeal arising from a decision of a trial court on it. Under Article 162(2) of *the Constitution*, disputes relating to title to land, and occupation and use of land, should be handled by the court envisaged under that Article. Article 162(3) directs Parliament to establish that court. The *Environment and Land Court Act*, Cap 8D, Laws of Kenya, established the Environment and Land Court as the court for that purpose. Article 165(5) declares that the High Court has no jurisdiction over the matters the subject of Article 162(2).
9. The issue herein is about occupation and use of land. Where land, including structures erected on it, is leased or rented out, the arrangement would be that the lessor or renter, or the tenant, acquires a right to occupy and use the land, or the structures standing or erected on the land. Any disputes over that lease or tenancy arrangement would be a dispute over occupation or use.
10. The law, on that, is the legislation governing land. In Kenya, that would be the *Land Act*, Cap 280, Laws of Kenya, and the *Land Registration Act*, Cap 300, Laws of Kenya. The *Land Act* has a whole section on leases, about how they are created, about consideration for the letting or leasing, and handling of disputes over it. The court, for handling disputes over processes and actions regulated by the *Land Act*, such as leases and tenancies, is the Environment and Land Court, by dint of sections 2 and 150 of the *Land Act*.
11. As the High Court has no jurisdiction over leases and tenancies, and disputes and actions around them, I would have no jurisdiction to entertain the instant appeal. Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA) requires me to down my tools, which I hereby do. As a consequence, I shall, as I hereby do, strike out the appeal herein. The respondent shall have the costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 10TH DAY OF NOVEMBER 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Mwenda, instructed by Gichuki Kimere & Company, Advocates for the appellants.



Mr. Nyoroku, instructed by Shiramba Etemere, Advocate for the respondent.

