



REPUBLIC OF KENYA



**Onduru v Alela (Environment and Land Appeal E020 of 2024)  
[2025] KEELC 7722 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7722 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND APPEAL E020 OF 2024  
FO NYAGAKA, J  
NOVEMBER 4, 2025**

**BETWEEN**

**BRIAN OMOLLO ONDURU ..... APPELLANT**

**AND**

**CHARLES O. ODUNDO ALELA ..... RESPONDENT**

*(Being an appeal from the ruling of the Principal Magistrate Hon. Oruo C.N.C (PM) delivered on the 23rd September, 2024 in Rongo ELC No. E040 of 2023)*

**JUDGMENT**

**Introduction**

1. This is an Appeal arising from the ruling of Honourable Oruo C.N.C. Principal Magistrate, delivered on 23<sup>rd</sup> September, 2024 in Rongo ELC No. E012 of 2021.
2. The Appellant filed a Memorandum of Appeal dated 7<sup>th</sup> October, 2024 appealing against the said ruling on the following grounds: -
  1. That the learned Trial Magistrate erred in law and in fact in failing to properly analyze and appreciate, that Review, stay and or setting aside the order Dated 23/9/2024 touching on issues of Discovery of facts, whereas the trial Magistrate court case touched on the Lease Agreement and not issue of trespass, which court could have considered.
  2. That there was an apparent error on the first Application, which order was issued on 16/4/2024, which culminated to the issue of Review and setting aside, which order was subsequently upheld via court order issued on the 23/9/2024.
  3. That the learned Magistrate erred in law and in fact to stop the process of Lease Agreement that is running for five years, perpetuating and equating it with trespass, a total departure of appreciating law and facts thereof.



4. That the learned Magistrate misdirected himself on the Application of Law and principles by failing to appreciate issue of trespass and Lease thereof, besides, payment of rent, which can only be adjudicated before the Business Rent Tribunal Court.
5. That the learned Magistrate failed to Appreciate that the court lacks jurisdiction to deal with matters of Rent.
3. The Appellant seeks orders allowing the appeal and setting aside the trial magistrate's ruling dated 23<sup>rd</sup> September, 2024. He prays that the same be substituted with an order dismissing the Respondent's suit since the court lacked jurisdiction to determine rent matters.

### **Brief Facts**

4. The Appellant had filed an application dated 24<sup>th</sup> April, 2024 seeking that the trial court sets aside its ruling of 16<sup>th</sup> April, 2024 where it had issued conservatory orders pending hearing and determination of the main suit. He claimed that there was an apparent error on the face of record since the trial magistrate based his ruling on a lease agreement and not the issue of trespass.
5. The trial court vide its orders issued on 23<sup>rd</sup> September, 2024 dismissed the said application for lack of merit.
6. The Appellant being dissatisfied with the ruling filed the present appeal which was canvassed by way of written submissions.

### **Submissions**

7. Learned counsel for the Appellant filed their submissions dated 19<sup>th</sup> June, 2025 where they gave a summary of the case and relied on the case of Njoroge & Another v Monyo Civil Appeal No. 96 of 2021 [2024] KEHC 3164 [eKLR]. They urged the court to allow the appeal as prayed.
8. Learned counsel for the Respondent on the other hand filed his submissions dated 23<sup>rd</sup> June, 2025 where he identified three issues for determination. The first issue was whether the dispute is contractual in nature (arising solely from lease obligations), or whether it properly amounts to a claim for trespass. He submits that though the dispute arose from a lease it evolved into a claim of trespass once the Appellant remained on the property after expiry of the lease period and in breach of agreed terms. He cited the case of Ng'ang'a & Another V Wanjiru [2015] eKLR.
9. The second issue was whether the trial court had jurisdiction and applied the relevant legal principles correctly. It was counsel's submission that the trial court had jurisdiction under Section 13(2)(a) and Section 23 of the *Environment and Land Court Act*, 2011. He further submits that the Appellant's contention that the matter should have been referred to the Rent Tribunal was misplaced since the lease was that of agricultural land and not commercial premises. He cited the case of Mbita Sugar Estates Ltd V Ombogo [2018] eKLR.
10. The final issue was whether the issuance of conservatory orders was justified in the circumstances. While submitting in the affirmative, counsel relied on Order 40 Rule 2 of the Civil Procedure Rules, 2010 and argues that the Respondent demonstrated a prima facie case hence the orders issued.
11. In conclusion, he urged the court to dismiss the appeal with costs.



## Analysis and Determination

12. Upon consideration of the grounds of appeal, pleadings, submissions and the authorities cited, the following issues are for determination:
  1. Whether the appeal is merited.
  2. Who should bear the cost of the appeal.
13. Being a first appeal, the court relies on a number of principles as set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...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 allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”
14. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:-
  - “1.
    - (1) Any person considering himself aggrieved—
      - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
      - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”
15. The Respondent filed a suit seeking a permanent injunction against the Appellant for trespass alleging that there was no subsisting lease between them.
16. He subsequently filed an application dated 16<sup>th</sup> November, 2023 seeking conservatory orders in the nature of temporary injunction against the Appellant from trespassing onto the suit land.
17. It is a fact that the trial court on 16<sup>th</sup> April, 2024 issued conservatory orders against the Appellant from trespassing onto the suit parcel pending the hearing and determination of the suit in line with the lease agreement dated 21<sup>st</sup> April, 2022.



18. The Appellant also filed an application dated 24<sup>th</sup> April, 2024 where trial court vide its orders dated 23<sup>rd</sup> September, 2024 upheld its earlier orders of 16<sup>th</sup> April, 2024.
19. This court has taken the liberty and time to peruse the court record. It is not in dispute that there was a lease agreement between the Appellant and Respondent for a period of 5 years commencing 21<sup>st</sup> April, 2022. It is this court's view that the trial court only issued conservatory orders at an interlocutory stage as the suit was yet to be heard and determined on merit.
20. The Appellant contends that there was an error apparent on the face of record where the trial court based its ruling on the lease agreement and not the issue of trespass. He also contends that the trial court lacked the requisite jurisdiction to deal with matters rent.
21. It is this court's view that there was no error apparent on the record since it is a fact that the trial court's ruling was yet to determine the matter on merit so as to establish whether the issue was the lease agreement or trespass.
22. In the conclusion, the appeal lacks merit and the same is hereby dismissed with no order as to costs.
23. It is not in dispute that the order appealed from was an interlocutory one hence the lower court matter has not been heard on the merits. The filing, processing and determination of this appeal must have taken time which was precious in determining the suit in the trial court. This court directs that lower court matter be speeded up upon this Judgment and file being presented to the trial court.
24. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM  
THIS 4<sup>TH</sup> DAY OF NOVEMBER 2025.**

**HON. DR. IUR NYAGAKA**

**JUDGE**

In the presence of,

Agure Advocate for the Appellant

No Appearance for Ongoso Advocate for Respondent

