

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ELC LA NO. E006 OF 2024

DAVID KIRIMI BEDFORD.....
.....APPELLANT

VERSUS

STEPHEN MANGI (through his attorney

CHRISTINE MUKANGI).....1ST

RESPONDENT

LYDIA WANJIRU.....2ND

RESPONDENT

MBURU NJUE.....3RD

RESPONDENT

ALEX KINYUA.....4TH

RESPONDENT

HELLEN MUTHONI.....5TH

RESPONDENT

EUNICE KIVUVA.....6TH

RESPONDENT

JANE WANGECHI.....7TH

RESPONDENT

EVALINE MUKASI.....8TH

RESPONDENT

REGINA MUTHONI.....9TH

RESPONDENT

JUDGMENT

A. Introduction

1. The material on record shows that the parties to the appeal were involved in various references before the Business Premises Tribunal (*the Tribunal*). The appellant and the 1st respondent were both respondents before the Tribunal (even though the appellant too had his own reference) whereas the 2nd - 9th respondents were the applicants. There were 5 references before the Tribunal which were consolidated, heard together and a single judgment dated 21.12.2023 delivered in respect thereof.

B. Decision of the tribunal

2. The material on record shows that in adjudicating the references the Tribunal framed the following 5 issues for determination, namely;

a) Whether the landlord's notices of termination of lease against the 2nd Respondent and dated 21st or 22nd September, 2020 is lawful.

b) Whether the lease agreement dated 2nd and 18th December 2020, between the 1st and 2nd Respondents is legit or lawful.

c) What is the effect of the 2nd Respondent's notices to alter the terms of the Tenancy with the Applicants all dated 18.11.2019.

- d) *Whether the termination notices served upon the Applicants by the 1st Respondent and dated 01.03.2021 are lawful.*
- e) *Who is entitled to the rents accruing from the demised premises between the 01.01.2021 and the date of this judgment.*
- f) *Who should bear the costs of this suit.*

3. Upon determining the various issues, the Tribunal made the following disposal orders;

- a) *That the notices of termination dated both the 21st and 22nd September 2020 by the 1st Respondent to the 2nd Respondent are declared of no legal effect having been fully compromised by the Addendum to lease agreement dated 02.12.2020 and 18.12.2020.*
- b) *That the 2nd Respondent is a lawful tenant of the 1st Respondent and the relation will terminate effective the 31.12.2023 unless otherwise lawfully intervened.*
- c) *That the notices of termination by the 2nd Respondent to the Applicants are marked as settled and therefore of no effect nor consequence.*
- d) *The 1st Respondent's notices of termination dated 1.3.2021 against the Applicants are declared illegal, null and void and of no effect.*
- e) *The 2nd Respondent is entitled to all the rental income accrued from Title LR, No. Kilifi/5054/II subject to meeting his obligations with the 1st Respondent under the aforesaid lease herein.*

f) That all the rents deposited with the tribunal will forthwith be released to the 2nd Respondent and who shall forthwith be at liberty to levy distress against any of the Applicants in arrears of rent.

g) Each party shall bear own costs of the suit.

C. Grounds of appeal

4. Being aggrieved by the Tribunal's order that each party do bear its own costs the appellant filed a memorandum of appeal dated 09.02.2024 raising the following grounds;

a) The Tribunal erred in law and in fact in denying the appellant costs yet he was the successful party

b) The Tribunal erred in law and in fact in failing to give reasons for not awarding costs to the appellant.

c) The Tribunal erred in law and in fact in that it did not follow the principles applicable when awarding costs.

d) The Tribunal failed to sufficiently consider that the case was consolidated with Mombasa BPRT Case No, 250 of 2020 (the Lead File), Lydia Wanjiru & 7 Others versus Stephen Mangi and David Kirimi and the length of time the case took and the conduct of the Respondents through the proceedings.

e) That the refusal by the Tribunal to award costs to the Appellant was bad in law and prejudicial to the Appellant and it occasioned failure of justice.

5. As a result, the appellant prayed for setting aside of the Tribunal's order on costs and its substitution with an order awarding him costs in the consolidated references. He also sought costs of the appeal.

D. Directions on submissions

6. When the appeal was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were accorded an opportunity to file and exchange their written submissions. The record shows that the appellant filed submissions dated 17.09.2024 whereas the 1st respondent's submissions were dated 17.09.2025. The rest of the respondents did not file any submissions or participate in the appeal.

E. Issues for determination

7. Although the appellant framed 5 grounds in his memorandum of appeal, the court is of the view that the real issue which runs through all the 5 grounds is the failure by the Tribunal to award him costs of the reference. The appellant considered himself to have been the successful party hence entitled to costs. That is the issue the court shall consider and determine in the appeal.

F. Applicable legal principles

8. It is well settled in law that the award of costs in an action or proceeding is at the discretion of the court. That is the import of *Section 27 of the Civil Procedure Act (Cap 21)* and case law.

However, such discretion must be exercised judiciously and not capriciously.

9. In the case of *Mbogo & Another vs Shah [1968] EA 98* the Court of Appeal for Eastern Africa considered the principles applicable in an appeal challenging the exercise of judicial discretion by the trial court as follows;

“.....a court of appeal should not interfere with the exercise of the discretion of a Judge unless it is satisfied that the Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the Judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice”

10. Similarly, in *Mrao Limited vs First American Bank of Kenya Ltd & 2 Others (Civil Appeal 39 of 2002[2003] KECA 175 (KLR) (7 March 2003) (Judgment)* it was held that an appellate court may only interfere with a trial Judge’s exercise of judicial discretion where the Judge;

- a) Misdirected himself in law; or*
- b) Misapprehended the facts; or*
- c) Took into account considerations of which he should not have taken into account; or*

d) Failed to take into account of considerations of which he should have taken account; or

e) Made a decision which is plainly wrong.

G. Analysis and determination

11. The court has considered the material and submissions on record on the award of costs. The court is aware of the general principles as contained in *Section 27 of the Civil Procedure Act (Cap 21)*. There is no doubt that a successful litigant is entitled to costs unless there are grounds militating against such award.
12. The appellant considers to have been the sole victor in the 5 consolidated references and makes no reference to the fact that although he had a reference against the 1st respondent, he had also issued a notice to alter the terms of tenancy of his sub-tenants and that he was also a respondent before the Tribunal. In fact, the record of appeal shows that the he withdrew or abandoned the notices he had given to the sub-tenants during the pendency of the matter before the Tribunal. He did not mention the fact that he was not condemned to pay any costs on account of the said notices.
13. In the opening paragraph of its decision, the Tribunal stated that the dispute had a long and chequered history and that it

had been the subject of the appeals before the Environment and Land Court. In considering who shall bear costs of the case, the Tribunal stated thus;

“Looking at this suit in its totality, I am of the considered opinion that this is one case that I should depart from the conventional wisdom of Section 27 of the Civil Procedure Act and direct that each party bears own costs”

14. The court is of the opinion that the Tribunal clearly had in mind the provisions of *Section 27 of the Civil Procedure Act*. The court is not satisfied that the decision it made on costs was not plainly wrong, or that it was based upon any misdirection in law. The court is not satisfied that the Tribunal took into account any irrelevant factors. The reasoning of the Tribunal was influenced by matters contained in the body of the judgement itself.
15. The appellant was not the only successful party in the consolidated references. He did not even succeed in all respects because the material on record shows that he withdrew or abandoned some notices he had issued to alter the terms of tenancy of some of the applicants before the Tribunal. In the opinion of the court, there is no legitimate reason to interfere with the judicial discretion of the Tribunal on the issue costs.

Perhaps the Tribunal could have done better by setting out expressly the reasons at the end of the judgment. Be that as it may, the appellant can peruse the entire judgment for himself.

H. Conclusion and disposal orders

16. The upshot of the foregoing is that the court is not satisfied that the Tribunal erred in law in directing that each party shall bear its own costs. The court finds no merit in the appeal. As a consequence, the appellant's appeal is hereby dismissed. In order to bring this matter to closure each party shall bear its own costs of the appeal.

It is so decided

JUDGMENT dated and signed at Mombasa and delivered
virtually via Microsoft Teams on this **20th** day of **November, 2025**.

.....

Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Appellant present in person

Christine Mukangi for the 1st respondent

No appearance for the 2nd- 29th respondents

ORIGINAL