

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET

ELC APPEAL No. E030 2024

MONICAH WAMBUI KAMAU APPELLANT
VERSUS

MOHAMED ALI RESPONDENT

(Being an Appeal against the Judgment of Hon. Patricia May delivered on 14th June, 2024 in BPRT No. 51 of 2020; Mohammed Ali vs Monicah Wambui Kamau)

JUDGMENT:

1. Vide a Reference dated 27th August, 2020 filed at the Business Premises Rent Tribunal (BPRT), the Respondent herein opposed a notice of termination of tenancy served upon him by the Appellant herein in respect of the premises known as Eldoret Municipality/Block 6/95. The judgement of the Tribunal was delivered by Hon. Patricia May on 14th June, 2024 allowing the reference with costs, which were assessed at KShs. 100,000/-. The Tribunal then quashed the notice of termination for being a nullity.
2. Being dissatisfied with the decision of the Tribunal, the Appellant appealed against the whole judgment in BPRT No. 51 of 2020 vide a Memorandum of Appeal dated 14th June, 2024. The Appellant raised the following grounds of Appeal: -
 - i. THAT the Tribunal erred in both law and fact by delivering a judgment in a matter that it was curtailed of jurisdiction noting that the lease Agreement dated 24th August, 2010 is for a lease period of fifteen (15) years which is contrary to the provisions of Section 2(1)(a) and (b) of the Landlord and Tenant (Shops and Catering Establishments), that only

cloths it with Jurisdiction to determine matters whose lease tenure does not exceed five (5) years.

- ii. THAT the Tribunal erred in both law and in fact by failing to consider and abide by the High Court orders issued on 4th July 2011, 17th June 2020 and 17th May, 2023 respectively in the High Court at Eldoret in Probate & Administration Cause No. 10 of 1985 it being a superior court than the Tribunal.
 - iii. THAT the Tribunal erred in both law and in fact by failing to consider and abide by the High Court orders issued on 4th July 2011, 17th June 2020 and 17th May 2023 respectively in High Court at Eldoret in Probate & Administration Cause No. 10 of 1985 and the same constitutes or rather encourages the Respondent to continue intermeddling with the Estate of Kamau Gichuhi.
 - iv. THAT the Tribunal erred in both law and in fact by failing to consider the Certificate of Lease issued on 19th February, 2024 which clearly stipulates that I am the rightful owner of all residential premises situated at Eldoret Municipality Block 6/95 hence having the right to evict the Respondent.
3. Relying on the above grounds, the Appellant asked the court to grant the following reliefs against the Respondent:-
- (a) The Appeal be allowed in its entirety.
 - (b) The judgment of Hon.Patricia May delivered on 14th June, 2024 in BPRT No. 51 of 2020; Mohamed Ali vs Monicah Wambui Kamau be set aside.
 - (c) Cost of this Appeal herein be awarded to the Appellant.
 - (d) Any other relief that this Honourable Court deems fit and just to grant.

Submissions:

4. The court directed that the Appeal be canvassed by way of written submissions. The Parties complied and filed their written submissions. The Appellant's submissions are dated 21st March, 2025. The Respondent's submissions are dated 23rd September, 2025.

Appellant's Submissions;

5. The Appellant argued the Appeal on two issues, the first being that of jurisdiction to hear and determine the reference in BPRT No. 51 of 2020. On this issue, Counsel for the Appellant cited Section 2(1)(a) and (b) of the BPRT Act which limits the jurisdiction of the Tribunal to leases for a period not exceeding 5 years. Counsel submitted that the Lease subject of the proceedings in the BPRT between the Respondent and one Leah Mukami was for a period of 15 years.
6. Counsel explained that the issue of jurisdiction was raised in the BPRT through a Notice of Preliminary Objection dated 7th August, 2021 but the same was dismissed in a ruling by Hon. Patricia May on 26th November, 2021. That the ruling found that the Tribunal had jurisdiction under Section 2(1)(b)(ii) of the Act. Counsel argued that the ruling failed to consider the fact that the suit premises was subject of an ownership dispute between the late Leah Mukami and the Appellant. Therefore, this suit ought not have been filed in the BPRT to begin with.
7. Counsel further submitted that the ownership dispute emanates from Cause No. 10 of 1985; in the Matter of the Estate of Late Kamau Gichuhi. That in that suit, on 16th October, 1985 the court ordered that with respect to Eldoret Municipality/Block 6/95 all residential quarters belonged exclusively to the

Appellant and a front shop to be shared equally by both widows. That contrary to these orders, Leah Mukami Gichuhi obtained a Certificate of confirmation of Grant that the premises belonged to them equally and obtained registration in their names in equal share.

8. Counsel submitted that the Appellant has since obtained orders setting aside the Certificate of Confirmation of Grant, and further orders on 17th June, 2020 for rectification. That these orders were served on the Respondent vide letter dated 29th July, 2020 but instead of vacating he filed the reference at the BPRT under Section 6(1) of the Landlord & Tenant (Shops, Hotels and Catering Establishments) Act. Counsel submitted that the jurisdiction of the BPRT had not been properly invoked since no Notice had been served on the Respondent.
9. Counsel submitted that the Respondent had made it clear that she intended to assume control and implement new lease terms as the owner of the premises, and if the Respondent was not in agreement, he was at liberty to vacate. Counsel further submitted that the Respondent continued enjoying the injunction granted in the BPRT, and after the death of Leah Mukami, continued paying rent to her son.
10. Counsel faulted the BPRT for continuing to hear the dispute even after it became aware of the rectified Certificate of Lease when it should have dismissed it since the issue was not that of a landlord and tenant thus did not fall within its scope. Counsel further submitted that the Respondent was evicted from the suit premises in 2024 by Eshikoni Auctioneers and the Appellant entered into a Lease with one Kelvin Kepngetich, thus there is no landlord and tenant relationship between them. Counsel thus

argued that the Tribunal had no jurisdiction to entertain the matter.

11. Counsel for the Appellant submitted that on 4th July, 2011 and 17th June, 2020 the Court issued orders that resulted in the rectification of the Certificate of Lease issued 21st July, 2000. That there were further orders made on 20th September, 2024 with respect to the suit premises. That under Article 165, the High Court is a superior court with supervisory jurisdiction over lower courts. Counsel argued that the judgment contradicts the High Court's rulings delivered on 17th May, 2023 and 20th September, 2024, and if not set aside, the Appellant will continue to be deprived her proceeds since the Respondent now pays rent to Leah Mukami's son, Ngugi Kamau.
12. On the issue of jurisdiction, Counsel relied on **Republic vs Chairperson, Business Premises rent Tribunal at Nairobi ex parte Suraj Housing & Properties Limited & 2 Others (2016) eKLR, Martin Luther Mc Were vs James Mabango Ambudo (2022) eKLR** and **Samuel Kamau Macharia vs Kenya Commercial Bank & 2 Others, Civil Appl. No. 2 of 2011.**
13. On the second issue, Counsel submitted that despite being aware of all the Court's orders, the Respondent has vehemently refused to vacate the premises or enter into an agreement with the Appellant and her children, who are the rightful beneficiaries, and the Appellant had no option but to evict him. Counsel urged that the Respondent's actions amount to intermeddling with the estate of Kamau Gichuhi and the impugned judgment of the BPRT encourages him to continue

intermeddling. Counsel prayed that the Court allow the Appellant and her family to enjoy the fruits to their inheritance.

The Respondent's Submissions;

14. In the Respondent's Submissions, Counsel submitted that the BPRT is empowered under Sections 6 and 12 as read with Section 4 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act CAP 301 to hear and determine disputes involving controlled tenancies. Counsel submitted that the Respondent entered into a Lease Agreement dated 24th August 2010 with Leah Mukami (Deceased), for a term of Fifteen (15) years allowing him to operate a butchery on the premises. That the lease established a Landlord-Tenant relationship, in the nature of a controlled tenancy.
15. Counsel opined therefore, that the Tribunal had jurisdiction to entertain the matter. In support of the Tribunal's jurisdiction, Counsel relied on **Owners of Motor Vessel "Lillian S" vs Clatex Oil (Kenya) Ltd (1989) KECA, Macharia vs Kenya Commercial Bank & 2 Others (Supra), Al-Riaz International Limited vs Ganjoni Properties Limited (2015) eKLR** and **Dhirajlal J. Shah & Another Vijay Amritlal Shethia (2018) eKLR**.
16. Counsel also submitted that the BPRT delivered a ruling on the issue of jurisdiction which the Appellant never appealed against, and instead she acquiesced and continued participating in the proceedings. Counsel argued that the issue is therefore res judicata under Section 7 of the Civil Procedure Act and the Appellant's attempt to raise it on appeal is barred. Counsel relied on **Bernard Mugo Ndegwa vs James Nderitu**

Githae & 2 Others (2010) KEHC 3922 (KLR), John Florence Maritime Services Limited & Another vs Cabinet Secretary Transport & Infrastructure & 3 Others (Petition 17 of 2015) (2021) KESC 39(KLR), George W.M. Omondi & Another vs National Bank of Kenya Ltd & 2 Others (2001) KEHC 841 (KLR).

17. Counsel submitted that Section 6 of CAP 301 allows a tenant to oppose a notice to terminate or alter the terms of tenancy. That however, only a landlord can issue such notice. Counsel argued that a controlled tenancy existed between the Respondent and Leah Mukami (deceased), thus the Respondent's reference was properly filed. Counsel faulted the Appellant for issuing a Notice to terminate yet she was not the Respondent's Landlord. Counsel termed the said action as well as his eviction from the premises an illegality and claimed that the same could only be done by the representatives of the late Leah Mukami's estate.
18. Counsel explained that on receipt of the Appellant's Notice, the Respondent issued a notice of non-compliance and then filed a reference in the BPRT. He relied on **Republic vs Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others (2016) eKLR, Nairobi Housing Development Ltd vs Highridge Corner Bar Ltd (1979) eKLR, Munaver N. Alibhai t/a Diani Boutique vs South Coast Fitness & Sports (1995) eKLR, Saheb vs Hassanally (1981) KECA 9 (KLR).**
19. With regard to the orders of the High Court, Counsel submitted that the BPRT's jurisdiction is limited to Landlord-Tenant

disputes and does not extend to ownership disputes. Counsel submitted that the ownership dispute between the late Leah and the Appellant was irrelevant to the controlled tenancy, and the BPRT correctly focused on this issue. Counsel pointed out that the Respondent was not a party to the succession dispute, and further that no order was issued allowing his eviction from the suit property. Counsel urged that the Appellant was not absolved from issuing proper notice under the Act even if she had obtained orders from the family court.

20. Counsel further submitted that without proper notice to alter or terminate the lease, the Appellant's actions violated provisions of CAP 301 and necessitated protection from the BPRT and not anywhere else. On costs, Counsel submitted that they follow the events. Counsel claimed that the Respondent was compelled to defend this Appeal due to the Appellant's unlawful issuance of a Termination Notice despite not being the landlord. Counsel thus asked that the Appeal be dismissed with costs, and relied on **Re Hebtulla Properties Ltd (1979) eKLR** and **Orix Oil Limited vs Paul Kabeu (2014) eKLR**.

Analysis and Determination:

21. I have considered the grounds of appeal, the record of appeal, the written submissions and the authorities cited. I find that the issues for determination are:
- (i) *Whether the issue of jurisdiction is res judicata and cannot be raised in this court*
 - (ii) *Whether the Tribunal did in fact have jurisdiction to hear and determine the dispute herein*
 - (iii) *Whether the Appeal herein is merited*

(iv) *Who shall bear the costs of the Appeal?*

22. This being a first appeal, it is the duty of this court to re-analyse the case and draw its own independent conclusion as was held in **Paramount Bank Limited vs First National Bank Limited & 2 others (2023) KECA 1424 (KLR)** that:

“... A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of Section 78 of the Civil Procedure Act, a first Appellate Court can appreciate the entire evidence and come to a different conclusion...”

23. This Court is therefore under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions. I am aware however, that in doing so, the court must bear in mind the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it.

(a) Whether the issue of jurisdiction is res judicata and cannot be raised in this court

24. Section 7 of the Civil Procedure Act provides as follows on the issue of res judicata:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been

directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

25. I have seen the Appellant’s “Notice of Preliminary Point of Law/Objection” dated 7th August, 2021 filed at the Tribunal. The Appellant claimed that the Tribunal had no jurisdiction since the lease was for a period exceeding 5 years. The Appellant also claimed that the BPRT has no jurisdiction over matters concerning premises earmarked for residential purposes. The Appellant further claimed that the Tribunal had no jurisdiction to contradict orders issued by the Chief Magistrate’s Court which is superior to the Tribunal, among other reasons.
26. The Preliminary objection was dismissed vide ruling delivered on 26th November, 2021. The Tribunal found that tenancies for periods exceeding 5 years can still fall under controlled tenancies where there are break clauses other than breach. The court noted that while the lease between the Respondent and the late Leah Gichuhi was silent on the issue of termination, however the termination notice served was for reasons other than breach. The court thus found that there was an implication that the parties were amenable to terminating the tenancy for reasons other than breach. The Tribunal thus held that it had jurisdiction to deal with the dispute.
27. The Respondent now claims that the issue of jurisdiction is res judicata since it was already raised and the same was

determined in the Tribunal. The Respondent argued that since the Appellant did not challenge the ruling delivered by the Tribunal on the issue of jurisdiction, then she is barred from raising it again on appeal. There is no evidence that the Appellant lodged an appeal against the ruling of the Tribunal dismissing the PO on jurisdiction.

28. However, as held by the Court of Appeal in **Kenya Ports Authority vs Modern Holdings [E.A] Limited [2017] KECA 293 (KLR)** the question of jurisdiction may be raised at any time, even on Appeal. The court held as follows:-

“We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised:

‘... at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the Court itself - provided only that where the Court raises it suo moto, parties are to be accorded an opportunity to be heard.’

(See All Progressive Grand Alliance (APGA) v. Senator Christiana N.D. Anyanwu & 2 others, LER [2014] SC. 20/2013 Supreme Court of Nigeria). We agree with these authorities and, hold that the question of jurisdiction was properly raised before this Court because, as they say in Latin, ex nihilo nihil fit (out of nothing comes nothing).”

29. Moreover, I have also read the judgment of the BPRT and I note that the Tribunal majorly discussed the issue of its jurisdiction

to determine the dispute. Since the instant Appeal is against the whole judgment of the Tribunal, and as indicated the same formed a large part of the impugned judgment, then the question of jurisdiction cannot be said to be res judicata since effectively, it is that decision that is under scrutiny in this Appeal.

30. That aside, the in **Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others (2017) eKLR**, the Court of Appeal set out the elements of res judicata as follows:-

“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;

a. The suit or issue was directly and substantially in issue in the former suit.

b. That former suit was between the same parties or parties whom they or any of them claim.

c. Those parties were litigating under the same title.

d. The issue was heard and finally determined in the former suit.

e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

31. It is a requirement that the court that made the previous decision must itself have jurisdiction to entertain the suit. And since the issue of jurisdiction is also under challenge in this Appeal, then the next step is to determine whether indeed the

Tribunal had the requisite jurisdiction to entertain the dispute between the parties herein.

(b) Whether the Tribunal did in fact have jurisdiction to hear and determine the dispute herein

32. On the issue of jurisdiction, in the case of **Owners of the Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Ltd (1989) KLR 1**, Nyarangi, JA. explained that:-

"... Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

33. Additionally, the Supreme Court, in **Samuel Kamau Macharia vs Kenya Commercial Bank Ltd & 2 Others (2012) eKLR**, stated, on jurisdiction, thus:

"(68) 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 to itself jurisdiction exceeding that which is conferred upon it by law...without jurisdiction, the Court cannot entertain any proceedings...Where the constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation."

34. The Tribunal was established under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, CAP 301 Laws of Kenya. The preamble to the Act explains that it was intended to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The tenancies meant to be protected are commonly referred to as controlled tenancies.

35. Section 2(1) of CAP 301 defines controlled tenancy to mean a tenancy of a shop, hotel or catering establishment—

(a) which has not been reduced into writing; or

(b) 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:

36. The jurisdiction of BPRT is prescribed at Section 12 and 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 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'.

37. In this instance, the parties are in agreement that there was a written lease agreement entered into by the Respondent and the late Leah Gichuhi that was for a term of 15 years. Going by the provisions of Section 2(1) the period of 15 years effectively takes the dispute out of the ambit of the Tribunal. In addition, Section 2(1) above also limits the jurisdiction of the Tribunal to

written tenancies which contain a provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof.

38. The Lease agreement subject of this Appeal did not contain a termination notice, and this fact was acknowledged by the Tribunal. Nevertheless, in its ruling on the PO the Tribunal found that there was an implication that the parties were amenable to terminating the tenancy for reasons other than breach. While that may be the case, it is clear that as at the time the Notice of Termination of Tenancy was issued in 2020, it had been 10 years from the date of the Lease.
39. Effectively therefore, even the implied term that the tenancy could be terminated for reasons other than breach, that still does not bring it into the jurisdiction of the BPRT since for that requirement to apply, the termination must be done within 5 years from the commencement of the lease. It is evident therefore that the BPRT had no jurisdiction to entertain the dispute between the Parties herein.

(c) Whether the Appeal herein is merited;

40. The bone of contention between the Appellant and the Respondent is the termination of the Lease Agreement entered on 24th August, 2010. The lease agreement was made between the Respondent and the late Leah Mukami, who was the Appellant's co-wife as landlady/Lessor. The late Leah Mukami was at the time acting on the strength of a Certificate of Lease dated 21st July, 2000 over Eldoret Municipality/Block 6/95 which was obtained pursuant to orders issued by the High Court in

Succession Cause No. 10 of 1985, in the Estate of Kamau Gishuhi (deceased), their late husband.

41. It is important to note that the said estate was distributed pursuant to a Consent Order recorded between the Appellant and the late Leah Mukami before V.V. Patel on 16th October, 1985 in High Court Succession Cause No. 10 of 1985. A copy of the said consent order was produced at page 124-125 of the Appellant's list of documents filed before the tribunal. With regard to the property known as Eldoret Municipality/Block 6/95, it was agreed that:

***“Eldoret Municipality/Block 6/95 is shared as follows:-
All residential quarters at the back thereof will exclusively belong to Monicah Wambui Kamau.
The front shop will be shared equally by both widows.”***

42. The late Leah Mukami then went behind her co-wife and obtained Certificate of Lease dated 21st July, 2000 in the names of Leah Mukami and Monica Wambui each holding $\frac{1}{2}$ share of Eldoret Municipality/Block 6/95. The same was issued pursuant to a Certificate of Confirmation of Grant dated 29th October, 1997. However, by order made on 4th July, 2011 in High Court Succession Cause No. 10 of 1985, Justice Azangalala cancelled the Certificate of Confirmation of Grant and ordered that a proper one be issued in terms of the consent order recorded before Justice V.V. Patel. Consequently, a new Certificate of Confirmation of Grant was issued on 26th July, 2012 in terms of the consent order.
43. The matter of the suit premises again was taken back to court through an application in the same succession cause dated 10th

April, 2015. On 1st July, 2020 Justice Hellen Omondi made the following orders:-

- I. The Certificate of Lease issued on 21.7.2000 over parcel no. Eldoret Municipality/Block 6/95 granting half share of the property to the parties herein be cancelled.***
- II. The Uasin Gishu County Land Registrar do issue a proper certificate of lease in the respect of parcel number Eldoret Municipality/Block 6/95 in accordance with the confirmed grant of letters of administration issued on the 26.7.2012 pursuant to which the Petitioner/Respondent is entitled to half share of the front shop only and the Objector/Applicant is entitled to half share of the front shop and all the residential quarters at the back and the developments thereof.***
- III. This court approves the survey plan attached herewith in respect of parcel number Eldoret Municipality/Block 6/95 marked (MWK 6) as a true representation of the shares of the parties herein as specified in the aforesaid certificate of confirmation of grant issued on 26.7.2012.***

IV. ...

V. ...

44. A new Certificate of Title was issued on 19th February, 2024 naming the late Leah Mukami as owner of 0.003Ha and Monica Wambui as owner of 0.042 Ha. The Appellant's contention however, is that the Respondent's shop is/has extended to her part of the property, being the residential premises. This has

been denied by the Respondent who claims he is occupying the portion demised to his landlady, the late Leah Mukami.

45. I note however, that at the first paragraph on page 4 of the Lease Agreement (page 391 of the Record of Appeal), the Respondent was allowed to make improvements by carrying out reconstruction on the rear side of the premises. It is therefore possible that the Respondent's shop has extended into the residential premises which are indeed at the back of the original shop area.
46. Besides, in the ruling delivered by Justice Hellen Omondi on 19th May, 2021, the court found that there was no stay of the orders dated 1st July, 2020 thus there was nothing to stop the objector from taking possession. The Learned Judge noted that the late Leah Mukami had defiantly told the court that the said order had not been executed because she was in occupation of the premises. This ruling is proof to me that the Respondent was indeed occupying the suit premises despite protests from him stating that he was not occupying the Appellant's part of the suit premises.
47. Moreover, according to the lease agreement dated 24th August, 2010, Leah Mukami was described as the registered proprietor of all that parcel of land known as Eldoret Municipality/Block 6/95 and all the buildings and improvements erected thereon. This was clearly not true even at the time since the Certificate of Title at the time clearly indicated that the land was owned by the Appellant and Leah Mukami. Had the Respondent bothered to conduct his due diligence, he would have discovered this and possibly sought a clarification on the true position from the Appellant.

48. That notwithstanding, the Respondent is aware of the dispute herein between Appellant and the late Leah Mukami. The Appellant wrote to the Respondent on 28th October, 2010 granting him 30 days' notice to vacate the suit premises citing that she intended to carry out renovations thereon. This was just about 2 months after the lease had been executed. It appears that the Respondent did not comply with this notice.
49. In addition, the orders of 1st July, 2020 were brought to the attention of the Respondent vide a letter from M/s Isiaho Sawe & Company Advocates dated 29th July, 2020 which annexed a copy of the orders. In the said letter, the Respondent was informed that the Appellant was the legal beneficiary of the residential premises that he occupied and that she wished to take over the premises for her own use. The letter pointed out that the Respondent remained on the premises despite the fact that there was no tenancy agreement between the Appellant and Respondent to warrant his remainder thereon. In that letter, the Respondent was asked to vacate the premises within 30 days or face eviction.
50. As further proof that the Respondent was aware of the ownership dispute, he referred to it in his Affidavit sworn in the Tribunal Case on 22nd July, 2021 claiming that the Appellant wanted to takeover and control of the half share of the shop owned by Leah Mukami, his landlady.
51. There is also the fact that the Respondent entered the Lease with Leah Gichuhi, who as at July, 2020 was no longer the registered owner of the premises. Even though the proper title was issued in 2024, the title used by Leah Mukami to transact with the Respondent was cancelled/revoked on 1st July, 2020.

Being that the Respondent did not enter into any new lease with the Appellant herein, there was no Landlord-Tenant relationship between the parties herein to justify his remainder on the suit premises or to bring the dispute into the ambit of the BPRT.

52. On 20th April, 2024 the Respondent was eventually forcibly removed from the premises and his property thrown out. However, the Respondent has had several notices since, 2010 to vacate the premises and did not comply. He was again notified on 29th July, 2020 that Leah Mukami was no longer the owner of the premises and was asked to vacate within 30 days, but he once more failed to comply. In the circumstances, I am not convinced that he is entitled to the costs assessed by the Tribunal.

(d) Who shall bear the costs of the Appeal?

53. The law has always been and remains that costs follow the events. It is the successful party therefore that is entitled to costs. The power to award costs is discretionary donated to this Court by Section 27, of the Civil Procedure Act, which provides that:-

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and

the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order."

54. It is trite that such discretion must be judiciously exercised and the reasons thereof given. From the above deliberation, it is clear that this Appeal is merited and therefore succeeds. There being no justifiable reasons to depart from the general rule that costs follow the event, I do find that the Appellant having succeeded in this Appeal is entitled to the costs thereof.

Orders:-

55. Consequently, the Appellant's Appeal as contained in the Memorandum of Appeal dated 14th June, 2024 is merited, and the following orders issue:-

- (a) The Appeal herein be and is allowed in its entirety.
- (b) The judgment of Hon. Patricia May delivered on 14th June, 2024 in BPRT No. 51 of 2020; Mohamed Ali vs Monicah Wambui Kamau be set aside.
- (c) The Respondent not being a tenant of Monica Wambui Kamau has no right to remain on the suit premises and more specifically the half share of the front shop beneficially owned by the Appellant, Monica Wambui Kamau.
- (d) Cost of this Appeal herein are awarded to the Appellant.

56. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **27TH** day of **NOVEMBER, 2025** vide Microsoft Teams.

**HON. C. K. YANO
ELC, JUDGE**

In the presence of;

Ms. Muchiri holding brief Ms. Kipsura for Appellant.

Mr. Otwal Brian for Respondent.

Court Assistant - Laban.

ORIGINAL