

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

E.L.C APPEAL NO. E002 OF 2024

ELIAS BARE SHILL.....
.....APPELLANT

VERSUS

MOSES MWANGI.....
.....RESPONDENT

(Being an Appeal from the Ruling and Order of Hon. Mike Makori delivered on 2nd July 2024 in Nairobi Business Premises Rent Tribunal No. 403 of 2024).

JUDGMENT

1. This Appeal is against the Ruling and Order of Hon. Mike Makori delivered on 2nd July 2024 in Nairobi Business Premises Rent Tribunal No. 403 of 2024. The Ruling and Order arose from the Notice of Motion application dated 28th March 2024 by the Respondent who was the Applicant before the Tribunal where inter alia the Respondent sought orders against the Appellant restraining the Appellant from levying distress or in any manner interfering with the Respondents quiet possession of the premises known as Garissa Township/Block 1/72 situated in Garissa Township.

2. Upon hearing the application by way of Affidavit evidence and Written Submissions the Honourable Tribunal allowed the Respondents application in the following terms:-

(i) The Respondent, his agents, servants, assignees, employees or people acting under his instructions and particularly Recovery Concept Auctioneers are permanently restrained from encroaching upon, occupying, alienating, constructing, taking any step to enter or in any way whatsoever interfering with the Applicant's quiet possession of premises known as Garissa Township/Block 1/72 situated in Garissa Town.

(ii) The OCS Garissa Township Police Station to ensure compliance.

(iii) Each party to bear their own costs.

3. The Appellant dissatisfied and aggrieved by the Ruling/decision of the Tribunal has appealed to this Court

and has by the Memorandum of Appeal dated 2nd August 2024 set out 5 grounds of Appeal as follow:-

- 1. That the Ruling by the Learned Member of the Tribunal was against the weight of evidence.**
- 2. That the Learned Member of the Tribunal erred in law and infact reducing the dispute between the Appellant and the Respondent into a single question of whether the Respondent had paid rent while the Respondent denied the existence of a landlord-tenant relationship between himself and the Appellant which was the crux of the dispute before the Tribunal.**
- 3. That the Learned Member of the tribunal erred in fact by finding that the Respondent was not in rent arrears despite the Respondent stating in his Affidavit that he had not paid rent to the Appellant.**
- 4. That the Learned Member of the Tribunal misdirected himself in holding that the Appellant had not denied involvement with Shamsa Haji Sigara while the same is**

categorically denied by the Appellant in two Affidavits filed before the Tribunal.

5. That the Learned Member of the Tribunal erred in law in granting equitable relief to the Respondent who approached the Tribunal with unclean hands denying the existence of a Land-lord tenant relationship between himself and the Appellant which assertion is proved false by the Tenancy Agreement dated 1st September 2023 which the Tribunal acknowledged in its Ruling.

4. The Appellant thus seeks that the Ruling delivered on 2nd July 2024 be set aside and the Respondent be ordered to pay all the rent in arrears from October, 2023 to date and in default the Appellant to be at liberty to levy distress for the rent.

5. The brief facts relating to the instant Appeal are that the Respondent was at all material times a tenant in the premises described as Garissa Township/Block 1/72 in Garissa Town. The Respondent's Landlord in the premises was the estate of Mohamed Bare Shill (deceased) who was

a brother of the Appellant. The Respondent all along had been paying rent of the premises to the estate of Mohamed Bare Shill and that he had never at any time recognized the Appellant as the Landlord of the premises and had never paid rent to him. The Respondent averred that he had regularly and promptly paid his rent and had no rent arrears owing in respect of the premises. The Respondent averred that vide a letter dated 31st January, 2024 the Appellant's Advocates wrote to him demanding rent for Four (4) months October 2023 to January 2024 and thereafter the Appellant issued notice to levy distress for rent arrears of Kshs. 160,000/-. It was the position of the Respondent, the Appellant was not his Landlord and he had no outstanding rent arrears to warrant any levy of distress. The Respondent consequently filed BPRT No. E403 of 2024 which culminated in the impugned Ruling dated 2nd July 2024, the subject of this Appeal.

6. The Appellant for his part asserted that he was the registered owner of the suit property, Title No. Garissa Township/Block 1/72. He stated that he previously had

allowed rent for some of the Commercial units on the suit premises to be paid to his late brother's widow but that on or about July 2023 he notified all the tenants on the suit premises to pay rent directly to him and not his brother's widow as they had been doing. The Appellant averred the Respondent was one of the tenants and that he executed a new lease agreement with him dated 1st September 2023 and he had paid rent to the Appellant for the months of July, August and September 2023. The Appellant stated that the Respondent in October 2023 informed him he was experiencing financial difficulties and sought indulgence but he never made payment prompting the demand made in January 2024. The Appellant admitted there was a pending case between him and his siblings being Garissa ELC No. E006 of 2023 where an order of status quo had been issued but averred that the Respondent was using this pending dispute with his siblings to avoid paying rent that was due and payable to him (the Appellant).

7. The Respondent in reply to the Appellant's Replying Affidavit swore a Supplementary Affidavit dated 30th April 2024 where he reiterated he had been paying his rent for

the shop he has rented in the premises to the Appellant's brother's widow one Shamsa without fail. He explained the lease the Appellant referred to in the Replying Affidavit related to lease of residential apartments and not the shop premises. The Respondent reiterated the ownership of the premises title No. Garissa Township/Block 1/72 was in issue in **Garissa ELC Case No. E006 of 2023: Aden Bare Shill (suing as the personal representative of the Estate of Bare Shill Abdi) -vs- Elias Bare Shill & Another**, where an order of maintenance of status quo had been issued.

8. The Hon. Member of the Tribunal heard the application on Affidavit evidence and the submissions made on behalf of the parties. In his Ruling, the Hon. Member of the Tribunal held that the pending case before the Environment and Land Court where an order of status quo had been made did not concern payment of rent and as such the Tribunal could deal with issues touching on rent payment. The Tribunal explained that the Respondent had demonstrated how he had paid rent for the demised premises to whom

and the amount paid. The Tribunal affirmed on the bases of the explanation given by the Respondent, it had no doubt that the Respondent did not have any rent arrears and on that account allowed the Respondent's application and issued an order of restraint against the Appellant barring the Appellant from in any manner interfering with the Respondents quiet possession of the demised premises.

9. As this is an Appeal of first instance, this Court is duty bound and indeed obligated to reevaluate the evidence before the Lower Court to satisfy itself whether or not the Hon. Member of the Tribunal was justified to reach the decision that he did. This is in keeping with the principle established by the Court of Appeal in the case of **Selle & Another -vs- Associated Motor Boat Co. Ltd & Others (1968) EA 123.**

10. I have reviewed the pleadings and the submissions made on behalf of the parties. As per the evidence before the Tribunal it was not disputed that the Respondent had

been a tenant in the suit premises over a long period (20) years. That during the lifetime of Bare Shill Abdi (deceased) rent was paid to him and after his death the Respondent paid rent to his widow and had continued to do so up to the time of filing the reference before the Tribunal. That there is a pending dispute being Garissa ELC No. E006 of 2023 pitting the Appellant and his siblings concerning the ownership of the suit premises.

11. On the evidence before the Tribunal there was no clear evidence of a Landlord and tenant between the Appellant and the Respondent. There was no evidence tendered by the Appellant to demonstrate that the Respondent did at any time pay rent to him. There was uncontroverted evidence that the Respondent had paid rent to the widow of the deceased for the period that the Appellant sought to distress rent. As observed by the Hon. Member of the Tribunal there was no rent that was in arrears for the premises. What is evident however is that the Appellant and his siblings have a ownership dispute that is pending before the ELC and until that case is

determined the issue as to who is entitled to be paid the rent will remain outstanding. In that case the Court ordered the status quo as concerns the property be maintained and observed and that could by extension mean whoever was receiving the rental income would continue to do so.

12. In the circumstances, I find no basis upon which I could fault the Hon. Member of the Tribunal and interfere with the decision that he reached. The Appeal lacks merit and I dismiss the same with costs to the Respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY
AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.**

J. M. MUTUNGI

ELC JUDGE