



REPUBLIC OF KENYA



**Kiburu v Boma Mart Limited & 2 others (Civil Appeal E628 of 2021)
[2025] KEHC 18760 (KLR) (Civ) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18760 (KLR)

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

CIVIL

CIVIL APPEAL E628 OF 2021

WM MUSYOKA, J

DECEMBER 15, 2025

BETWEEN

JOSEPH KIBURU APPELLANT

AND

BOMA MART LIMITED 1ST RESPONDENT

BEDAD KUBAI GATHUKU 2ND RESPONDENT

IRENE WAIRIMU GICHUGA 3RD RESPONDENT

*(Appeal from the judgement and decree, of Hon. DM Kivuti, Principal Magistrate,
PM, delivered on 10th September 2021, in Nairobi CMCCC No. 9519 of 2019)*

RULING

1. The dispute, at the trial court, turned on tenancy issues. The 1st respondent pleaded a landlord-tenant relationship. It sought to restrain levying of distress to recover rent, and its quiet possession and tenancy, over LR No. 11668/4, from being disturbed, and for offset of rent arrears and indemnity, with respect to the balance; and a declaration that the distress for rent would be null and void, and in breach of the lease or tenancy agreement.
2. The appellant filed a defence, acknowledging ownership of LR No. 11668/4, and the tenancy relationship, and asserting that the 1st respondent was in arrears of rent. He pleaded existence of a lease agreement. He counterclaimed for arrears of rent, and for vacant possession.
3. A copy of the lease agreement was attached, to the list of documents dated 28th September 2016. The lease agreement was between the appellant and the 1st respondent, where the appellant was described as “landlord” and the 1st respondent as “tenant.”



4. Leases and tenancies are about use and occupation of land. Disputes, around them, would fall outside of the jurisdiction of the High Court, by dint of Article 165(5) of the Constitution, for the court with jurisdiction would be the Environment and Land Court, by dint of Article 162(2) of the Constitution.
5. Additionally, leases and tenancies are provided for under the Land Act, Cap 280, Laws of Kenya. The court for the purposes of the matters the subject of the Land Act, including leases and tenancies, is the Environment and Land Court, by virtue of sections 2 and 150 of the said Act.
6. That being the case, the High Court has no jurisdiction over these matters, and, therefore, by extension, it has no jurisdiction over the instant appeal. The instant appeal ought to have been filed at the Environment and Land Court.
7. 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 if I find myself faced with a matter in respect of which I am bereft of jurisdiction. Should I do so here, and dismiss the appeal?
8. I am conscious of the fact that 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) was decided prior to the promulgation of the current Constitution, in 2010, whose provisions lean towards substantive justice and people-centredness. To down tools would cause hardship, yet the matter can be handled by another court, which has jurisdiction, provided that I transfer it there.
9. Consequently, I do hereby order transfer of the appeal herein, to the Environment and Land Court, at Nairobi, for hearing and final disposal. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 15TH DAY OF DECEMBER 2025.

W.M. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

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

Advocates

Mr. Odek, instructed by S. Ng’ang’a Ndung’u & Company, Advocates for the appellant.

Mr. Mirie, instructed by Gichuki King’ara & Company, Advocates for the 1st respondent.

