

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
COMMERCIAL APPEAL NO. E001 OF 2025

EVANS MARK MWANGI.....
APPELLANT

VERSUS

DAVID GACHINA MURIITHI.....
.....RESPONDENT

(Being an appeal against the ruling of Hon. Casmir Obiero delivered on 31st July 2025 at Dagoretti Small Claims Case No. E294 of 2025)

JUDGEMENT.

1. This judgment arises from an appeal against the ruling delivered on 31st July 2025 by the Small Claims Court at Dagoretti, which upheld a preliminary objection challenging the court's jurisdiction. The appeal is founded on the memorandum of appeal dated 6 August 2025. Although five grounds were raised, they crystallise into a single issue for determination, namely whether the learned trial magistrate erred in law in the interpretation and application of section 12(1)(b) of the Small Claims Court Act, 2016.
2. The appellant contends that the dispute before the Small Claims Court was a claim for breach of contract properly falling within the court's statutory mandate, and not a tenancy dispute as found by the trial court. It is argued that the trial magistrate failed to distinguish between a contractual claim for refund of monies and a landlord-tenant dispute, thereby misdirecting himself on jurisdiction. The appellant further faults the trial court for disregarding precedent, particularly **Michelle Muhanda v LP Holdings Ltd [2025] KEHC 393**, and for failing to consider the

appellant's submissions, thus allegedly denying the appellant access to justice under Article 50 of the Constitution.

3. The appeal was canvassed by way of written submissions. The appellant submitted that the Small Claims Court had jurisdiction under section 12(1)(b) of the Act to determine claims founded on contracts for money held and received. It was argued that the tenancy had been terminated by mutual agreement and that the claim related solely to the refund of a rent deposit and agreed costs of improvements. Reliance was placed on **Michelle Muhanda v LP Holdings Ltd (supra)** and **Greenlife Crop Protection Africa Limited v Trovic Ventures Limited & 2 others [2023] eKLR.**
4. The respondent opposed the appeal, submitting that the rent deposit arose directly from a tenancy agreement and could not be severed into a separate contract for money held and received. It was argued that the dispute was, in substance, a tenancy matter falling outside the jurisdiction of the Small Claims Court. Reliance was placed on **Christoffersen v Kavneet Kaur Sehmi t/a The Random Shop [2022] eKLR** and **Maworks Investment Company Limited v Mwilitisa [2024] eKLR.** The respondent urged the court to dismiss the appeal with costs.
5. I am guided by the holding in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR** that jurisdiction is everything and, without it, a court must down its tools. Jurisdiction of the Small Claims Court is conferred strictly by statute. Section 12(1) of the Small Claims Court Act sets out the matters the court may determine. Section 12(1) of the Small Claims Court Act No. 2 of 2016, as follows:-

“12(1) Subject to this Act, the rules and any other law the court has jurisdiction to determine any civil claim relating to -

- a. A contract for sale and supply of goods or services.**
- b. A contract relating to money held and received.**
- c. Liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property.**
- d. Compensation for personal injuries, and**
- e. Set off and counter claim under any contract.”**

6. Notably, the section does not provide for disputes relating to rent, rent deposits, or tenancy relationships. Parliament has established specialised courts and tribunals to deal with landlord-tenant disputes, and such jurisdiction cannot be assumed by implication.
7. While the appellant relied on decisions of the High Court, it bears emphasis that decisions of courts of equal jurisdiction are not binding but merely persuasive. In any event, jurisdiction flows from statute, not precedent. Where the statutory framework is clear, the court must give effect to it. The claim before the trial court arose from a tenancy relationship, and the mere framing of the claim as one for refund of monies did not divest it of its true character.
8. In the circumstances, I find no fault with the learned trial magistrate’s decision declining jurisdiction.
9. The appeal is without merit and is hereby dismissed with costs to the respondent.

Orders accordingly.

**Judgement dated and delivered virtually this 18th day of
December 2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Ms. Njeri h/b for Mr. Opondo for the Appellant
Karimi Court Assistant.