



Place Four Forty-Six Limited v Necst Motors Kenya Limited & another; National Transport and Safety Authority (NTSA) (Interested Party) (Commercial Case E545 of 2025) [2025] KEHC 19154 (KLR) (Commercial and Tax) (19 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E545 OF 2025
PM MULWA, J
DECEMBER 19, 2025**

BETWEEN

PLACE FOUR FORTY-SIX LIMITED PLAINTIFF

AND

NECST MOTORS KENYA LIMITED 1ST DEFENDANT

ASSOCIATED VEHICLE ASSEMBLIES LIMITED 2ND DEFENDANT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY (NTSA) . INTERESTED PARTY

RULING

1. Before this Court for determination are two Notices of Preliminary Objection lodged by the 1st and 2nd Defendants dated 5th November 2025 and 22nd September 2025 respectively. Both objections raise substantially similar grounds, namely that this Court lacks jurisdiction to hear and determine the suit on the basis that it constitutes an enforcement action of a judgment of the Business Premises Rent Tribunal (BPRT), contrary to section 14 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301. It is further contended that the application dated 18th August 2025 and the suit filed contemporaneously therewith amount to an abuse of the court process and ought to be struck out.
2. The 1st Defendant, through learned counsel Mr. Eredi, submitted that jurisdiction to enforce decisions of the Business Premises Rent Tribunal vests in the Environment and Land Court pursuant to sections 14 and 15 of Cap 301. Counsel argued that the dispute arises from an underlying contract relating



to the use and occupation of land, thereby placing it squarely within the remit of the specialized land jurisdiction. It was contended that the suit, having been instituted in a court devoid of jurisdiction, is incompetent and liable to be struck out in limine.

3. For the 2nd Defendant, Mr. Nyamwaro submitted that the preliminary objections raise pure points of law as contemplated in established jurisprudence. He challenged the jurisdiction of this Court to enforce judgments of the Business Premises Rent Tribunal, submitting that such enforcement ought to be undertaken before a subordinate court as provided for under the statutory framework governing the Tribunal.
4. In opposition, Mr. Nyanyuki for the Plaintiff/Applicant submitted that sections 14 and 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* deal exclusively with appeals from decisions of the Tribunal and not enforcement proceedings. Counsel argued that the present suit is not an appeal from the BPRT but a substantive claim for recovery of a debt exceeding Kshs. 42 million, which, by reason of pecuniary jurisdiction, cannot be enforced by a subordinate court. He further submitted that there exists no landlord–tenant relationship between the Plaintiff and the 1st Defendant and that the claim before court is a debt recovery action, properly within the jurisdiction of this Court. It was therefore urged that both preliminary objections lack merit and should be dismissed.
5. I have considered the preliminary objections, the submissions by counsel for the parties, and the applicable law. The objections raise the issue of jurisdiction, which is a pure point of law and must be determined at the earliest opportunity. Jurisdiction is everything and without jurisdiction a court of law downs tools as held in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1*.
6. The law on preliminary objections is settled. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696*, the Court of Appeal defined a preliminary objection as one which raises a pure point of law, argued on the assumption that all facts pleaded by the other side are correct, and which, if upheld, would dispose of the suit. Jurisdiction is a pure point of law and, where raised, must be determined at the earliest opportunity.
7. The jurisdiction of the Business Premises Rent Tribunal is provided for under section 12 of Cap 301, while section 14 thereof provides for appeals to the Environment and Land Court from determinations of the Tribunal. Section 15 empowers the Tribunal to issue orders and provides the mechanism through which such orders may be enforced. The statutory scheme does not clothe the Tribunal with unlimited enforcement powers, nor does it oust the jurisdiction of superior courts in all matters touching on debts or contractual claims merely because the parties once stood in a landlord–tenant relationship.
8. The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR* held as follows:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court 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...the Court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”
9. Similarly, the Court of Appeal in *Co-operative Bank of Kenya Ltd v Patrick Kang’ethe Njuguna & 5 Others [2017] eKLR* emphasized that not every dispute touching on land or occupation thereof automatically falls within the exclusive jurisdiction of the Environment and Land Court, and that the court must interrogate the true nature of the dispute.



10. The import of the statutory scheme is that matters arising from controlled tenancies, including enforcement of Tribunal determinations, are ring-fenced within the mechanism provided under Cap 301. A party cannot, by craft of pleadings, sidestep the statutory procedure and clothe the dispute as an ordinary civil or debt recovery claim in order to invoke the jurisdiction of this Court. Where *the Constitution* or an Act of Parliament provides a clear procedure for the redress of a grievance, that procedure must be strictly followed.
11. In the present case, it is not in doubt that the dispute between the parties emanates from proceedings before the Business Premises Rent Tribunal and that the Tribunal rendered a determination. The reliefs sought in the suit, and the application dated 18th August 2025 are, in substance, geared towards giving effect to, or enforcing, the Tribunal's decision. That being so, the Plaintiff was bound to pursue enforcement strictly in accordance with the procedure provided under Cap 301 and before the proper forum.
12. The argument that the monetary value of the claim ousts the jurisdiction of the forum prescribed by statute is misconceived. Jurisdiction is not conferred by the quantum involved but by *the Constitution* or statute. A Court's jurisdiction flows from the law and cannot be expanded by judicial craft or the parties' preferences.
13. I therefore find that this Court lacks jurisdiction to entertain the suit and the application dated 18th August 2025. Consequently, the suit is incompetent and amounts to an abuse of the court process.
14. In the premises, the Notices of Preliminary Objection dated 22nd September 2025 and 5th November 2025 are hereby upheld.
15. The suit, together with the application dated 18th August 2025, are struck out for want of jurisdiction.
16. Costs shall follow the event and are awarded to the Defendants.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF DECEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Nyanyuki for Plaintiff/Applicant

Ms. Njoroge h/b for Mr. Eredi for 1st Defendant

Mr. Nyamwaro for 2nd Defendant

Court Assistant: Carlos

