

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI  
COMMERCIAL & TAX DIVISION**

**INSOLVENCY NOTICE NO. E691 OF 2024**

**LOCAL AUTHORITIES PENSION TRUST**

**REGISTERED TRUSTEES .....**

**.....PLAINTIFF**

**VERSUS**

**INSTITUTE OF ADVANCED TECHNOLOGY LIMITED .....**

**DEFENDANT**

**RULING**

**Introduction**

1. Before this Court for determination is a Preliminary Objection dated 2<sup>nd</sup> April 2025 by which the Defendant contends that this Court lacks jurisdiction over the present suit. According to the Defendant, the suit ought to have been commenced in the Environment and Land Court (ELC) pursuant to section 13(2)(a) of the Environment and Land Court Act, 2011 (ELC Act).
2. The Defendant urges that because the Plaintiff's claim concerns rent arrears allegedly arising from a lease over space on L.R. No. 209/638/1 (Pension Towers), it is therefore to "use and occupation of land" dispute within the exclusive remit of the ELC.

3. The Plaintiff opposes the objection, arguing that the cause of action is a civil debt claim for outstanding rent and mesne sums following the Defendant's vacation from the premises. The Plaintiff maintains that disputes for recovery of debts, collection of rent, and other obligations emanating from contracts are within the High Court's unlimited original civil jurisdiction.
4. The matter proceeded by way of written submissions. The Defendant, in support of the objection, filed its submissions dated 15<sup>th</sup> April 2025, whilst the Plaintiff filed theirs dated 15<sup>th</sup> May 2025, opposing the objection.

### **Analysis and Determination**

5. Having carefully considered the objection and the parties' respective submissions, I find that the sole issue for determination is whether the Defendant's Preliminary Objection is merited.
6. Before I render myself on the pertinent question in this ruling, it is critical that I set out the background of this case.
7. This matter arises from a dispute between the Plaintiff, the Local Authorities Pension Trust Registered Trustees (LAPTRUST), and the Defendant, the Institute of Advanced Technology Limited, concerning recovery of alleged rent arrears pursuant to a lease agreement executed between the parties on 14 February 2018.
8. Under the said lease, the Plaintiff leased to the Defendant office space situated on the 4th, 5th, and 6th floors of Pension Towers, measuring approximately **11,670 square feet**, together with the attendant

common areas, on property known as **L.R. No. 209/638/1**, for a term and rent stipulated therein.

9. The Plaintiff contends that the Defendant defaulted in payment of rent as agreed in the lease, and that as at **11 April 2021**, rent arrears had accumulated to **Kshs. 25,339,431**, with the outstanding amount rising to **Kshs. 29,696,485.75** as at **3 November 2022**. Consequently, the Plaintiff instituted the present suit seeking recovery of the said arrears.
10. In response, the Defendant filed the present **Notice of Preliminary Objection dated 2 April 2025**, asserting that this Court lacks jurisdiction to hear and determine the matter.
11. The Defendant's position is that the dispute constitutes a landlord-tenant matter relating to use and occupation of land, and rents, thereby falling within the exclusive jurisdiction of the Environment and Land Court (ELC) by virtue of Article 162(2)(b) of the Constitution and Section 13(2)(a) of the Environment and Land Court Act, No. 19 of 2011.
12. The Plaintiff opposes the Preliminary Objection, contending that this Court retains jurisdiction under **Article 165(3) of the Constitution**. The Plaintiff argues that the dispute is of a commercial nature, grounded on a debt arising from a past tenancy, rather than a contestation over land use, occupation, or title.
13. It is against this backdrop that the Court is invited to determine whether the objection is merited.

14. It is settled that jurisdiction is everything, and where a court lacks it, it must “down its tools”. This long-settled principle from **Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR**, guides that the Court’s first duty is to satisfy itself on jurisdiction before doing anything else.
15. The constitutional and statutory architecture is equally not in doubt. Article 162(2)(b) contemplates courts of equal status with the High Court to determine disputes relating to “the environment and the use and occupation of, and title to, land.” Parliament gave effect to this through the ELC Act, whose **Section 13(2)** itemises, inter alia, disputes on land use planning, title, tenure, **rents**, rates, valuations, and “any other dispute relating to environment and land.” Conversely, **Article 165(3)** preserves the High Court’s unlimited original jurisdiction in civil and criminal matters, save for the express exclusions in Article 165(5), including matters falling within the jurisdiction of the Article 162(2) courts.
16. The dispute in the present case is where this claim sits within the statutory and constitutional framework.
17. The Defendant’s position is that since the Plaintiff sues for rent arrears allegedly accruing from the Defendant’s occupation of demised premises at Pension Towers (L.R. No. 209/638/1), the dispute is inherently one of “use and occupation” and “rents,” thus for the ELC.
18. The Plaintiff on its part counters that, on the pleaded facts, the dominant issue is monetary recovery after the tenancy relationship ended, and that the suit does not call upon the Court to regulate

ongoing occupation, to determine any right to possess land, or to adjudicate title or land use—hence it is properly within the civil jurisdiction of the High Court.

19. The Court of Appeal in [Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others \[2017\] KECA 79 \(KLR\)](#), explained that a charge is a disposition distinct from land “use”, and that contracts not incidental to land “use” such as mortgages, charges, collection of dues and rent, fall within the civil jurisdiction of the High Court, not the ELC. The Court stated that:

“Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under **Section 13** of the **ELC Act** ought to be understood within the context of the court’s jurisdiction to deal with disputes connected to ‘use’ of land as discussed herein above. Such contracts, in our view, ought to be incidental to the ‘use’ of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.....

By parity of reasoning, the dominant issue in this case was the settlement of amounts owing from the respondents to the appellant on account of a contractual relationship of a banker and lender.”

20. The ratio emphasises that one must look to the dominant issue. If the heart of the matter is accounting or debt recovery as between lender and borrower (or, by extension, landlord and former tenant where possession and occupancy are no longer live issues), the High Court’s jurisdiction is engaged.

21. Additionally, the same approach was taken by the Court of Appeal in [Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates v Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates \[2019\] KECA 504 \(KLR\)](#), where the Court stated that: -

“[12] We reiterate the position taken in ***Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna*** (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land. The dispute between the appellant and the respondent related to the professional undertaking given by the appellant to facilitate the land transaction between his client and the respondent’s client.”

22. Applying the “dominant test” question to the present case, the Court is of the firm view that the dispute in this case is purely pecuniary, one involving recovery of sums said to constitute past rent arrears. It does not seek to enforce or restrain current use or occupation of the premises.

23. The pleaded arrears are historic and quantified; Kshs. 25,339,431 as at 11 April 2021, alleged to have risen to Kshs. 29,696,485.75 by 3 November 2022. The claim is without any correlative claim about current possession, mesne profits for continuing occupation, or relief that would regulate ongoing use of land.

24. Further, the relationship between the parties, as pleaded, is historic. It relates to a lease that was executed on 14 February 2018; occupation took place, default occurred, and arrears crystallized. It is

clear that the Plaintiff's case is framed as a debt due, not a land controversy.

25. In any event, the legal questions likely to arise at trial are whether there are any arrears, the quantum, construction of lease covenants on payment and interest, set-off/discounts if any, and proof of default, which are quintessentially commercial and do not require specialized ELC fact-finding. They call for accounts, not land adjudication.
26. The Defendant's argument that jurisdiction belongs to the ELC Court because the arrears "emanated from use and occupation" cannot be right. If that were the case, any post-contract debt arising from a land-related arrangement (including professional undertakings or guarantees linked to conveyancing) would automatically shift to the ELC, an approach the Court of Appeal has, in **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna** (supra), rejected.
27. In these circumstances, the Court is not persuaded that the mere presence of the word "rents" in Section 13(2)(a) ELC Act transforms every claim about rent into an ELC matter regardless of context.
28. For the foregoing reasons, the Defendant's Preliminary Objection dated 2 April 2025 is hereby dismissed.
29. This Court retains the jurisdiction to hear and determine the Plaintiff's claim, being one for recovery of rent arrears as a civil debt.

30. **Costs** of the Preliminary Objection shall be borne by the Defendant.

31. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> JANUARY 2026.**

A handwritten signature in blue ink, appearing to read 'Moses Ado', is written over a light-colored rectangular background.

**HON. JUSTICE MOSES ADO**  
JUDGE