

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC CASE NO. E037 OF 2024

PETER KIPSIGEI SANG.....1ST

PLAINTIFF/RESPONDENT

ALLAN BRADLEY COMPANY LIMITE...2ND

PLAINTIFF/RESPONDENT

-VERSUS-

BENOM LIMITED

T/A BENOM HARDWARE.....1ST

DEFENDANT/APPLICANT

JUSTUS MALEL KARONEY

T/A CITY VIEW HOTEL & BUTCHERY..2ND

DEFENDANT/RESPONDENT

ROBINSON TUWEI.....3RD

DEFENDANT/RESPONDENT

DASHON KAMAU.....4TH

DEFENDANT/RESPONDENT

GEORGE KIPLAGAT.....5TH

DEFENDANT/RESPONDENT

PAUL MATHEKA.....6TH

DEFENDANT/RESPONDENT

KABARNET DIARIES.....7TH

DEFENDANT/RESPONDENT

MERCY JELAGAT.....8TH

DEFENDANT/RESPONDENT

CHILD	BITE.....	9TH
DEFENDANT/RESPONDENT		
GIBSON	MEROKA.....	10TH
DEFENDANT/RESPONDENT		
SAMUEL	NYAMBATI.....	11TH
DEFENDANT/RESPONDENT		
SAMMY	KIPRUTO	KAINO.....
DEFENDANT/RESPONDENT		12TH
MUNYAKA	SACCO.....	13TH
DEFENDANT/RESPONDENT		
LORNA	ATIENO.....	14TH
DEFENDANT/RESPONDENT		
SALINA	KIBICHII.....	15TH
DEFENDANT/RESPONDENT		
ROSE	ONYALO.....	16TH
DEFENDANT/RESPONDENT		
JOSHUA	ORIMBO.....	17TH
DEFENDANT/RESPONDENT		
EMILY	LELEI.....	18TH
DEFENDANT/RESPONDENT		
RON	TECHNOLOGIES.....	19TH
DEFENDANT/RESPONDENT		
ABRAHAM	MUTAI.....	20TH
DEFENDANT/RESPONDENT		
KIPSANG	SETEK.....	21ST
DEFENDANT/RESPONDENT		
ROTCHEKEI	LIMITED.....	22ND
DEFENDANT/RESPONDENT		

CHEPKOILEL	MATATU	SACCO.....23RD
DEFENDANT/RESPONDENT		
VIOLA	KURUMEI.....	24TH
DEFENDANT/RESPONDENT		
COLLETTE	ROP.....	25TH
DEFENDANT/RESPONDENT		
BENARD	NGETICH.....	26TH
DEFENDANT/RESPONDENT		
MONICA	KIBOR.....	27TH
DEFENDANT/RESPONDENT		
ANTHONY	KIPSANG	RONO.....28TH
DEFENDANT/RESPONDENT		
LEONARD	BORE.....	29TH
DEFENDANT/RESPONDENT		
JONAS	LAGAT.....	30TH
DEFENDANT/RESPONDENT		
BENJAMIN	ROTICH.....	31ST
DEFENDANT/RESPONDENT		
KERIO	SACCO	LIMITED.....32ND
DEFENDANT/RESPONDENT		
ANGAZA	MILELE	SACCO.....33RD
DEFENDANT/RESPONDENT		
RICHARD	AMDANY.....	34TH
DEFENDANT/RESPONDENT		
KONGTAI	SACCO.....	35TH
DEFENDANT/RESPONDENT		
ELDO	STAR	COLLEGE.....36TH
DEFENDANT/RESPONDENT		

JUSCOM	MUTANYA.....	37 TH
DEFENDANT/RESPONDENT		
PURITY	CHEROTICH.....	38 TH
DEFENDANT/RESPONDENT		
COLLINS	KIPCHUMBA.....	39 TH
DEFENDANT/RESPONDENT		
DAINTU	ENTERPRISES	LIMITED.....
DEFENDANT/RESPONDENT		40 TH
CELESTINE	CHELAL.....	41 ST
DEFENDANT/RESPONDENT		
SALOME	RONO	T/A
DEFENDANT/RESPONDENT	SHRIMP	COMP...42 ND
JOHN	TARUS	MAGUT.....
DEFENDANT/RESPONDENT		43 RD
RICHARD	TYRE.....	44 TH
DEFENDANT/RESPONDENT		
JOHN	MAINA.....	45 TH
DEFENDANT/RESPONDENT		
REDEEMED	CHURCH.....	46 TH
DEFENDANT/RESPONDENT		
RUNA	SACCO.....	47 TH
DEFENDANT/RESPONDENT		
NAILA	AGENCIES.....	48 TH
DEFENDANT/RESPONDENT		

RULING

1. The 1st Defendant (hereinafter referred to as **“the Applicant”**) did file a Notice of Motion Application dated

12.07.2025 (hereinafter referred to as **“the present Application”**) against the 1st and 2nd Plaintiff’s (hereinafter referred to as **“the Respondents”**) Plaint dated 13.06.2024 seeking the following Orders; -

a) The suit herein be struck out or dismissed for being an abuse of the process of the Court and for having been filed in contravention of the exhaustion of available avenues for redress.

b) Costs of the suit be borne by the Plaintiff herein.

2. The grounds in support of the prayers above are contained in the body of the present Application as well as the Supporting Affidavit sworn on the 15th of July 2025 and can be summarised as follows; -

i) The cause of action pleaded by the Respondents should be determined by the Business Premises Rent Tribunal in the first instance.

ii) Consequently, the Respondents have not exhausted the dispute resolution mechanisms provided under the Business Premises Rent Tribunal.

iii) The Jurisdiction of this Court is limited only on matters of Appeal emanating from the Business Premises Rent Tribunal.

iv) In essence, the Applicant sought this Court to struck out the Respondents’ suit and/or dismiss the same forthwith.

3. The present Application was duly served on the Respondents who did oppose the same by filing a Replying Affidavit sworn on the 01.09.2025.

4. The Respondents in opposition to the present application did plead the following grounds; -
- i) The Respondents were of the view that the present Application was made in bad faith, malicious and geared towards delaying the conclusion of this case.
 - ii) According to the Respondents, the case before the Court was filed on the 18.06.2024 and duly served on all the Defendants including the Applicant herein.
 - iii) All or most of the Defendants in the case did enter appearance and participated in the pre-trial procedures.
 - iv) The matter was then fixed for hearing on the 27.05.2025 but the Court was of the view that parties could negotiate and amicably settle the matter.
 - v) The negotiations for seek an amicable settlement began on the 25.07.2025 but before any resolution would be reached, the Applicant herein filed the present Application.
 - vi) According to the Respondents, the cause of action in the Plaint filed on the 18.06.2024 is whether or not the Defendants including the Applicant herein have any legal right over the portions of space within the property owned by the 1st Respondent.
 - vii) The Respondents did recognise that the Defendants including the Applicant herein were tenants in the 1st Respondents property, but the dispute was not about rental terms and/or conditions but the ownership rights and possession thereof.

- viii) The Respondents were of the view that this Court is the correct venue to adjudicate on the ownership and possession of the property in dispute as provided under the Environment & Land Court Act, No. 19 of 2011.
- ix) In conclusion, the Respondents sought this Court to dismiss the present Application with costs forthwith.
5. Upon service of the Replying Affidavit upon the Applicant, the Court did direct that the present Application would be heard by way of written submissions.
6. The Applicant duly filed its submissions dated 29.10.2025 in support of the present Application while the Respondents filed their submissions dated 21.10.2025 in opposition of the present Application.
7. The Court has indeed carefully perused the present Application, the Replying Affidavit thereof and the submissions by both parties and identified the following issues for determination; -

ISSUE NO. 1- WHAT ARE THE RESPONDENT'S CAUSES OF ACTION IN THE PLAINT DATED 13.06.2024 AGAINST THE DEFENDANTS INCLUDING THE APPLICANT HEREIN?

ISSUE NO.2- WHICH IS THE CORRECT VENUE IN LAW FOR THE DETERMINATION OF THE RESPONDENTS CAUSES OF ACTION IN THE PLAINT DATED 13.06.2024?

ISSUE NO. 3- IS THE PRESENT SUIT AN ABUSE OF THE COURT PROCESS?

ISSUE NO.4- ARE THE PRAYERS SOUGHT IN THE PRESENT APPLICATION MERITED?

ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

8. The Court having duly identified the above-mentioned issues for determination, the same will now be discussed as provided herein below.

ISSUE NO. 1- WHAT ARE THE RESPONDENT'S CAUSES OF ACTION IN THE PLAINT DATED 13.06.2024 AGAINST THE DEFENDANTS INCLUDING THE APPLICANT HEREIN?

9. The first issue in determination of the present Application is to establish the cause(s) of action in the Respondents' Complaint dated 13.06.2024.
10. Once the Court is clear on the cause(s) of action pleaded by the Respondents, the appropriate forum for hearing of the same can now be determined.
11. According to the Complaint dated 13th June, 2024, the 1st Respondent pleaded to be the registered owner of the property known as LR No. Eldoret Municipality Block 4/335 (hereinafter referred to as the **"the suit property"**).

12. The 1st Respondent disclosed that he had purchased the suit property through a public auction conducted on 26th June, 2020 and was registered as the lawful owner on 27th September, 2021.
13. Upon acquisition of the suit property, notices of change of ownership were dispatched to all the tenants including the Defendants herein on 28th September, 2021.
14. Unfortunately, the previous owner started writing letters to the Defendants directing them not to pay rent to the 1st Respondent who was the lawful registered owner.
15. Due to these contradicting instructions to the Defendants, the 1st Respondent instituted the proceedings known as Eldoret HCCC No. E002 of 2020 in which the 2nd Respondent was directed to collect rent from the Defendants herein until further orders of the court on 1st February, 2022.
16. Despite the order issued in Eldoret HCCC No. E002 of 2020, a number of the Defendants including the Applicant herein failed to comply thereby resulting to a recovery process being undertaken by Hegeons Auctioneers Limited through their notice of proclamation dated 11th May, 2024.
17. The 1st Respondent therefore is seeking for orders that the 2nd Respondent be allowed to continue collecting rent from the Defendants herein until vacant possession is granted.
18. In default of the Defendants paying rent, the 2nd Respondent be allowed to continue levying distress and/or other lawful means in ensuring that the same is collected.

19. Further to that, the 1st Respondent also sought for an order of vacant possession against the Defendants to enable him renovate the suit premises and bring it to a better condition than it is in line with its business objectives.
20. The 1st Defendant, who is also the Applicant in the present case, filed a Statement of Defence dated 11th October, 2024.
21. In its defence, the 1st Defendant denied the assertion that the 1st Respondent is the lawful owner of the suit property.
22. According to the Applicant, there has been conflicting directions on who should collect rent from the suit properties and as a result, it has been difficult to make the payments.
23. The Applicant further denied the allegation that the 2nd Respondent had been authorised to collect rent from the suit premises on behalf of the registered owner.
24. Consequently therefore, the actions by the 2nd Respondent to levy distress in an attempt to collect rent from the Defendant was illegal and a nullity.
25. According to the Applicant, the 1st Respondent was in a landlord and tenant relationship with the Defendants herein including the Applicant and as such, any dispute should be referred to the Business Premises Rent Tribunal (BPRT).
26. According to the Applicant, this suit was therefore premature keeping in mind that the doctrine of exhaustion had not been applied.
27. Similarly, the Applicant objected to the prayer of vacant possession sought by the 1st Respondent as the same was untenable and unsustainable.

28. Based on the facts herein above, the court identifies two substantive causes of action in the Complaint dated 13th June, 2024.
29. The first cause of action is whether or not the 1st Respondent is the lawful owner of the suit property and therefore entitled to collect rent from the Defendants.
30. The second cause of action is whether the 1st Respondent and the Defendants including the Applicant herein are in a protected tenancy as provided under the Landlord and Tenant (Shops, Hotels and catering Establishments) Act, Cap 301.
31. This court having identified the two causes of actions as what is contained in the Complaint dated 13th June, 2024 it will now proceed to determine the appropriate forum to hear and determine the same.

**ISSUE NO.2- WHICH IS THE CORRECT VENUE IN LAW
FOR THE DETERMINATION OF THE
RESPONDENTS CAUSES OF ACTION IN THE
COMPLAINT DATED 13.06.2024?**

32. In the second issue, the Court is now obligated to identify the correct venue or forum in which the two causes of action identified at issue no. 1 should be entertained.
33. The first issue deals with whether the 1st Respondent is the lawful owner of the suit property and therefore entitled to collection of rent from the Defendants herein.
34. The Environment and Land Act, No. 19 of 2011 provides in Section 13(2)(d) that this court shall have original and

appellate jurisdiction to hear matters dealing with public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land.

35. According to facts pleaded by the 1st Respondent and which were not denied by the Applicant herein, it is clear that the suit property was purchased through a public auction from a financial institution.
36. This transaction of purchase by public auction is one which creates enforceable rights to the 1st Respondent over the suit property.
37. In essence therefore, any dispute that arises from the purchase of the suit property by the Respondent should be handled by this Court.
38. As regards the second cause of action which is in regards to the relationship between the 1st Plaintiffs and the Defendants herein, including the Applicant, the same has to be looked at on two fronts.
39. The first front is whether or not there is a landlord and tenant relationship between the Plaintiff and the Defendants herein, including the Applicant.
40. According to the Plaint by the Respondents and the Defence by the Applicant, there is no dispute that there is a landlord and tenant relationship.
41. The only point of divergence is whether the landlord and tenant relationship is one which is protected under the Landlord and Tenant (Shops, Hotels and catering Establishments) Act, Cap 301 or not.

42. The Landlord and Tenant (Shops, Hotels and catering Establishments) Act, Cap 301 describes a controlled tenancy as follows in Section 2(1);-

“Controlled Tenancy means a tenancy of a chop, hotel or catering establishment-

(a) Which has not been reduced into writing; or

(b) Which has been reduced into writing and which-

(i) Is for a period not exceeding five years; or

(ii) Contains a provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or

(iii) Relates to premises of a class specified under subsection (2) of this section.

43. According to the provision highlighted hereinabove, any landlord and tenant relationship is deemed not to be controlled unless the following aspects are confirmed to be in existence:

(i) There is no written tenancy or lease agreement between the landlord and the tenant.

(ii) If there is a written tenancy or lease agreement, the same must be for five years or less.

- (iii) If there is a written tenancy or lease agreement, the said document must contain a provision for termination other than for breach of covenant available to either party within the first five years of the commencement.
44. The Applicant herein in the present application is seeking for the Complaint dated 13th June, 2024 to be struck out or dismissed on the basis that there exists a controlled tenancy between the 1st Respondents and the Defendants, including the Applicant.
45. Section 107 of the Evidence Act requires that he who alleges must prove.
46. Unfortunately, the Applicant did not point out whether the tenancy in the suit property had a written agreement or did not have.
47. Similarly, the Applicant did not disclose if there was a written agreement, for what period of time was it and whether there was any clause for termination other than breach of contract within five years of commencement.
48. From the facts in the Complaint dated 13th June, 2024 the Defendants herein, including the Applicant, did enter into the suit property way before the 1st Respondent purchased the suit premises at the public auction.
49. The Defendants, including the Applicant, have an obligation to disclose the nature of their interest in the suit property that requires to be protected or is within the provisions of the Landlord and Tenant (Shops, Hotels and catering Establishments) Act, Cap 301.

50. So far, the Applicant has not demonstrated any facts to that effect and this court cannot assume that there is a controlled tenancy simply because there is a landlord and tenant relationship.
51. As such, this court has jurisdiction to hear the Respondents' Complaint dated 13th June, 2024 and in the event that during the hearing, the Applicant and the other Defendants produce sufficient evidence to confirm a controlled tenancy, then the court will make the appropriate directions.

ISSUE NO. 3- IS THE PRESENT SUIT AN ABUSE OF THE COURT PROCESS?

52. Based on the finding at Issue No. 2 hereinabove, this court is of the considered view and finding that the present suit is not an abuse of the court process for the reason that the Applicant did not demonstrate the existence of a controlled tenancy as provided under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, CAP 301.
53. In essence, the 1st Respondent has a right in law to pursue legal recourse against the Defendants including the Applicant in line with the causes of action therein and the reliefs sought.

ISSUE NO.4- ARE THE PRAYERS SOUGHT IN THE PRESENT APPLICATION MERITED?

54. On this issue, the court hereby makes a finding that the present application is not merited and the prayers sought therein cannot be granted at this stage.

ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

55. The Applicant having not succeeded in the present application is condemned to pay costs.

CONCLUSION

56. In conclusion, the court hereby makes the following orders in determination of the present application; -

A. THE NOTICE OF MOTION APPLICATION DATED 12TH JULY, 2025 BE AND IS HEREBY DISMISSED.

B. THAT THE 1ST DEFENDANT/APPLICANT IS HEREBY CONDEMNED TO PAY COSTS TO THE RESPONDENTS.

DATED, SIGNED and DELIVERED in ELDORET this 19TH DAY OF JANUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

COURT ASSISTANT: Brian

COUNSEL FOR THE APPLICANT: Ms. Aketch

COUNSEL FOR THE RESPONDENTS: Mr. Momanyi