

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC MISC. APPLICATION E221 OF 2025

MICHAEL MUTINDA MUTEMI.....

APPLICANT

-VERSUS-

DAVID MBURU

KAHARA.....RESPONDENT

RULING

1. The applicant filed the notice of motion application dated 7th July, 2025 expressed to be brought under **Section 3**, and **3A** of the **Civil Procedure Act** and **Order 40** of the **Civil Procedure Rules** seeking for the following orders:

1. ***Spent.***

2. ***Spent.***

3. ***Spent.***

4. ***That pending the hearing the hearing and determination of this application the honourable court be and is hereby pleased to restrain the respondent either by himself, servants or agents from disposing, alienating or otherwise dealing with the motor vehicle registration KBP723E and any other property held in a manner that may alienate or destroy the same.***

5. ***That the honourable court be and is hereby pleased to order the Rent Restrictions Cause No. RRT/E194/2022 NAIROBI be transferred to the***

magistrate's court at Dagoretti Law Courts under a new cause number for the same to be heard and concluded on merit.

6. That pending the hearing and determination of the new case under a new cause number at the magistrate's court at Dagoretti law courts this honourable court be and is hereby pleased to restrain the respondent either by himself, servants or agents from disposing, alienating or otherwise dealing with the motor vehicle registration KBP723E and any other property held in a manner that may alienate or destroy the same.

7. That this honourable court be and is hereby pleased to find that there were no court orders from a competent court of law or tribunal granting the respondent, his agents or servants' authority to evict the applicant and the said eviction was oppressive, arbitrary and illegal.

8. Costs of this application be provided for.

2. The application is premised on the grounds on its face. It is further supported by the affidavit of the applicant sworn on even date. The applicant deposed that until 21st March, 2022 he was a tenant of the respondent in a rental residential house in Dagoretti,

and that he was evicted from the premises without cause on grounds of rent arrears, and his property, motor vehicle Reg. KBP 723E was taken away in the process.

3. The applicant deposed that the respondent had filed a rent restrictions tribunal matter at Nairobi, but before inter-parties hearing the respondent and his agents and servants evicted him and his family and took away his property without any warrant of attachment from a competent court. He deposed that the Rent Restrictions Tribunal pronounced itself to lack jurisdiction and his attempt to have the High Court transfer the said rent restrictions tribunal case to a civil court failed as the court also pronounced itself to lack jurisdiction.
4. The applicant deposed that this is the court that has supervisory jurisdiction to hear an appeal from the rent restrictions tribunal. He deposed that there is no warrant of attachment for the sale of his motor vehicle that was seized and that said auctioneer who attached the same died before selling it, thus the vehicle is still available.
5. The respondent filed his replying affidavit sworn on the 18th December, 2025. He confirmed that as at the month of February

2022, the applicant was his tenant, and he was in arrears and failed to make payment for the same. The respondent further deposed that due to the applicant's failure to clear his rent arrears, he lodged Rent Restriction Tribunal Case No. E194 of 2022 on 16th February, 2022.

6. It was deposed that the applicant was ordered by the Tribunal to pay the rent arrears of Ksh.22,500/= within 30 days, but failed to do so even though he was served with the order. He also did not appeal or set aside the Tribunal's orders. That on or about 21st March, 2022 D.A Dikwai Auctioneers proceeded to the respondent's address to levy in distress the arrears owed by the applicant.
7. The respondent deposed that if the applicant was aggrieved by the orders of the Rent Restriction Tribunal, he should have filed an appeal and not this application. Further that jurisdiction on a Landlord-Tenant relationship lies with the Environment and Land Court and not a Magistrate's Court such as Dagoretti Law Courts that he seeks to have the suit transferred to. The respondent also deposed that he is not the one in possession of the motor vehicle, thus issuing the orders sought will be in vain, adding that the same was lawfully attached.

- 8.** The application was canvassed through written submissions. The applicant filed his written submissions dated 7th January, 2026. The respondent filed his written submissions dated 9th January, 2026. I have considered the application, the reply thereof and the written submissions filed by both parties. The issue for determination is *whether the application has merit.*
- 9.** The applicant seeks for a restraining order against the sale, disposal or alienation of motor vehicle registration number KBP 723E that was seized by an auctioneer instructed by the respondent herein. He also seeks that Rent Restrictions Cause No.RRT/E194/2022 NAIROBI be transferred to the magistrate's court at Dagoretti Law Courts.
- 10.** The respondent on the other hand contends that the motor vehicle was seized as a levy in distress for unpaid rent arrears, even after the Rent Restriction Tribunal ordered the applicant to pay the arrears within 30 days, he declined to settle the amount.
- 11.** Before I proceed with the determination of the instant application, we must interrogate whether the court is duly seized with the jurisdiction to handle this matter.

12. The classic case on jurisdiction is **The Owners of the Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd (1989) KLR 1** where Nyarangi, J A held as follows:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

13. Thus, the court must instantly down its tools if it finds itself not clothed with the requisite jurisdiction to hear and determine the case. **Article 162(2)(b)** of the **Constitution** enshrines the jurisdiction of the Environment and Land Court as the only court with original and exclusive jurisdiction to determine disputes relating to the environment, use, occupation, and title to land.

14. This dispute emanates from a soured landlord/tenant relationship between the parties, which led the landlord who is the respondent herein to file the dispute before the Rent Restriction Tribunal. The Tribunal heard and determined the matter and issued orders on

the 17th day of February, 2022 when the applicant was ordered to pay the outstanding arrears of Kshs.22,500/- within 30 days of issuance of the order, failure to which, the respondent was granted leave to levy distress to recover the outstanding arrears through a licensed auctioneer, which he states is what he proceeded to do when the auctioneer seized the applicant's motor vehicle.

- 15.** This court has been granted the appellate jurisdiction by **Section 8** of the **Rent Restrictions Act CAP 296** which provides as follows:-

“Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.

(2) An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases

—

a) in the case of an order under subsection (5) of section 6; or

b) on any point of law; or

c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed

fact and law, and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact.

(3) Any person who is aggrieved by any decision, determination or order of a person acting under powers delegated to him under subsection (3) of section 5 may apply to the tribunal for a review of that decision, determination or order, and the tribunal may make such order thereon as it thinks fit.”

- 16.** However, this is a miscellaneous application, and not an appeal. The only recourse one has when aggrieved by a decision reached by a competent court or tribunal is review, judicial review, or an appeal, and this instant application falls into neither category.
- 17.** The applicant has contended in his submissions that the case before the **Rent Restrictions Tribunal** has not yet been fully heard and determined yet, therefore he cannot file an appeal, which is false, because a party can appeal from any order, even orders issued in interim applications.

18. What the applicant is essentially asking this court to do is to interfere with the decision of a competent tribunal and issue its own unilateral orders without the jurisdiction to do so, as the applicant has not come under an appeal. This court cannot be found to do such a thing.
19. Likewise, as much as there are magistrates who are gazetted to handle environment and land cases and their courts therefore have the required jurisdiction, this court is unable to transfer the application to Dagoretti Magistrate's Court as prayed, because the applicant has not invoked and engaged the appellate jurisdiction of the ELC Court and has filed a mere miscellaneous application, which is a grave error on his part. The learned judges of the Court of Appeal in the case of **Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR** found that:

“Jurisdiction is a weighty fundamental matter and to allow court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks, parties cannot even seek refuge under the “O2” principle or the overriding objective under the Civil Procedure Act, the

Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer. In Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another [2012] eKLR, it was held as follows: “It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other words, courts can only transfer a cause whose existence is recognized by law.”

20. From the above, this court finds the notice of motion application dated 7th July, 2025 to be lacking in merit and it is hereby dismissed with costs to the respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 26TH DAY OF JANUARY, 2026.**

HON. MBOGO C.G.

JUDGE
26/01/2026.

In the presence of:

Ms. Vena Aron - Court assistant

Mr. Mungai for the Respondent

Applicant in person but absent

ORIGINAL