



**Obwari Enterprises Limited & another v Business Premises Rent Tribunal; Anyoso
(Interested Party) (Environment and Land Case Judicial Review Application
E032 of 2025) [2026] KEELC 343 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E032 OF 2025
MN KULLOW, J
JANUARY 29, 2026**

BETWEEN

OBWARI ENTERPRISES LIMITED 1ST APPLICANT

THEODORA 2ND APPLICANT

AND

BUSINESS PREMISES RENT TRIBUNAL RESPONDENT

AND

SYLVIA ANYOSO INTERESTED PARTY

JUDGMENT

Introduction

1. The applicant has filed a Chamber summons application dated 5th May 2025 seeking for judicial review orders of certiorari to quash the proceedings and the decision of the Business premises Rent Tribunal in case No E193 of 2025 Sylvia Anyoso Versus Obwari Enterprises Limited and Theodora Nyang’au Nabwire Onyango Vs Mercy Kagendo Simiyu and prohibition orders prohibiting the respondent from hearing and determining the said case and lastly an order of stay barring any other conduct of the BPRT in the said case.
2. The gist of the application is that
 - i. The tribunal had no jurisdiction to issue the orders it did in granting injunctive orders against the applicants and directing interested party to file a further affidavit
 - ii. That these orders were issued despite the applicants herein having raised the question of jurisdiction in a notice of preliminary objection dated 7th March 2025



3. The application was grounded on grounds as in the statutory statement by the applicant and verifying affidavit dated 5th March 2025

Responses

4. The interested party filed its replying affidavit sworn on the 11th June 2025 where she deponed that the application was premature as the proceedings in the tribunal were still pending. That there was tenancy relationship as between the applicant and interested party and the applicants cannot claim that she was not a tenant and want to seek judicial review over orders that were made by a competent court.
5. That the applicants cannot seek to challenge the decision of the tribunal through judicial review rather should file an appeal
6. Further she deponed that the applicant had failed to seek other alternative forms of remedy such as seek for review of the order before approaching this court.

Submissions

7. The court directed the application be submitted by way of written submissions.

Applicant's submissions

8. The applicant filed its submission dated 18th June 2025 where it was submitted on the following issue

1. Whether the tribunal has the jurisdiction to entertain Tribunal case E193 OF 2025

9. On this she argued that there was no tenancy relationship as between the applicants and the interested party. That the tenancy agreement did not capture the interested party as a tenant but rather one Selina Akhabochi) who was not the one that instituted the reference and being that there was no tenancy relationship, the BRPT had no jurisdiction as the same was only conferred on establishment of a tenancy relationship as in section 2 of Landlord and Tenant (Shops, Hotels, and catering Establishment Act cap 301 relying on the decision in Republic Vs Chairperson Business Premises Rent Tribunal at Nairobi & Another Ex parte Suraj Housing & Properties Limited & 2 others (2016) eKLR
10. It was further submitted that the terms in the agreement was 5 years and 3 months which was not within the jurisdiction of the tribunal

Interested party's submissions

11. She reiterated the contents as in her replying affidavit indicating the application to be premature as the applicants had failed to exhaust other dispute resolution mechanisms before approaching this court and also the BPRT had not made a final determination on the matter relying on section 9 of the *fair administrative Action Act* and the case of Odhiambo & another v National Police Service & 3 others; CIC Genera Insurance Limited & 6 others [2023] KEHC 719 (KLR).
12. On the issue of whether there exists a tenancy relationship she indicated that she had been paying rent which had been received by the applicants without protest establishing a prim facie tenancy dispute.

Analysis and Determination

13. From the pleadings the only issue for determination is Whether the Business Premises and Rent Tribunal is vested with Jurisdiction to entertain Tribunal case No E193 OF 2025?



14. The Business Premises and Rent Restriction Tribunal is a quasi-judicial body which is subject to the supervision of this court under the court's judicial review jurisdiction. The question begging an answer, then, is what is the scope of judicial review? In *Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd* Civil Appeal No. 185 of 2001 the Court of Appeal expressed itself as follows:

Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself—such as whether there was or there was not sufficient evidence to support the decision... It is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairness demands that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it statutory body which can only do what is authorised by the statute creating it and in the manner authorised by statute.”

15. In this instant suit, the applicant aver that the question of jurisdiction was raised in Notice of preliminary objection at BPRT which was not addressed and the tribunal went ahead to give injunctive orders despite not making a determination on the same. A perusal through the pleadings of the tribunal indicate that the injunctive orders were issued on the 13th March 2025 whereas the preliminary objection was filed on the 7th March 2025. On further perusal, there is no proof that the preliminary objection was dispensed with hence the question of jurisdiction was not addressed
16. This court will therefore address itself on the issue of jurisdiction
17. There is a tenancy agreement attached on which the interested party relies on being the tenancy agreement dated 15th April 2019 as between Juvama international Limited as the Landlord and Selina Omutasyi Akhabochi as the tenant. The parties that are in the proceedings in Tribunal case No E193 OF 2025 are Sylvia Anyoso as the applicant /tenant and Obwari Enterprise Limited as the landlord. These are clearly different parties from the tenancy agreement and the applicant in the said Tribunal case has not produced any explanation as to how the parties in the tenancy agreement are linked to the parties in the tenancy agreement. As such, the tenancy agreement cannot be said to be binding on parties that are not the executing parties. There is no tenancy relationship as between the interested party herein and the applicants hence the Business and Rent tribunal had no jurisdiction over it furthermore, even if there was to be established a relationship as between the parties in the tenancy agreement and the parties in Tribunal case No E193 OF 2025, the said agreement was in the terms that it was for a period of 5 years and 3 months which was outside the period in the Landlord and Tenant (Shops, Hotels, and catering Establishment Act cap 301.
18. The jurisdiction of the of the Business premises Rent Tribunal to the disputes related to controlled tenancy is derived from section 2 of Landlord and Tenant (Shops, Hotels, and catering Establishment Act cap 301 which reads;

2(1)

- a. controlled tenancy” means a tenancy of a shop, hotel or catering establishment—which has not been reduced into writing;
- b. which has been reduced into writing and which—



- (i) is for a period not exceeding five years; or
- (ii) contains 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:

19. Having submitted as above I hold the view that there is no tenancy relationship and the Tribunal should have down its tools for lack of jurisdiction.
20. This is not disputed as a party is bound to exhaust other available remedies before resulting to judicial review to note however is that, such exhaustion will be within the context of bodies seized of jurisdiction. Where there is no jurisdiction, a court or tribunal should not proceed in that matter. Where the question of jurisdiction is raised, nothing in my view, stops a party approaching this court under judicial review even before a tribunal pronounces itself on the matter before it.
21. I hold that the applicants were well within their rights to apply for the judicial review orders
22. The upshot of the foregoing is that the application is merited and I make the following orders
- i. An order of Certiorari do issue quashing the proceedings, directions and orders made by the respondent in the business Premises and Rent Tribunal at Nairobi Case No E193 OF 2025 Sylvia Anyoso Versus Obwari Enterprise Limited and Theodora Nyangáu
 - ii. An order of prohibition directed at the Business Premises and Rent Tribunal at Nairobi from further having any conduct in Tribunal Case No E193 OF 2025 Sylvia Anyoso Versus Obwari Enterprise Limited and Theodora Nyangáu
 - iii. An order of stay of proceedings at the Business Premises and Rent Tribunal in Tribunal Case No E193 OF 2025 Sylvia Anyoso Versus Obwari Enterprise Limited and Theodora Nyangáu.
 - iv. Costs awarded to the applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 29TH DAY OF JANUARY 2026.

MOHAMMED N. KULLOW

JUDGE*

Judgment delivered in the presence of: -

Ms. Kemunto - for the Applicant

No appearance - for Respondent.

Ms. Indeku Interested Party appearing in person.

Philomena W. - Court Assistant

