

**IN THE COURT OF
APPEAL AT NYERI**

(CORAM: KANTAI, LESIIT & MUCHELULE,

JJ.A.) CIVIL APPEAL NO. E006 OF 2021

BETWEEN

JOHN BAPTISTA KANGA.....APPELLANT

AND

PATRICK NJIRU.....1ST RESPONDENT

KINGPIN AUCTIONEERS.....2ND

RESPONDENT

(Being an appeal against the judgment and decree of the Environment and Land Court at Kerugoya (E.C Cherono, J.) dated 13th December 2019

in

ELC No. 65 of 2017)

JUDGMENT OF THE COURT

1. This is an appeal from the ruling of the Environment and Land Court (ELC) at Kerugoya (E.C. Cherono, J.) dated 13th December 2019 on the question of jurisdiction. It followed a preliminary objection taken by the 1st respondent, Patrick Njiru, following the suit filed against him and Kingpin Auctioneers, the 2nd respondent, by the appellant, John Baptista Kanga. The court found that the dispute between the appellant and the 1st respondent was that of a tenant and landlord which was governed by the **Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap. 301**, and therefore it was not open for the appellant to sue the respondents before the ELC when the dispute was over the payment of rent.

2. The facts of the dispute were simply that, the 1st respondent, being the owner of the LR No. Wanguru/Township/160 sought that the appellant who was his tenant pays the outstanding rent. When the appellant did not pay, he instructed the 2nd respondent to repossess his property and sell it to recover the rent. This is what led the appellant to sue the two in the ELC at Kerugoya seeking restraining orders and general damages. The appellant claimed that his quiet and peaceful occupation and enjoyment of the property that he had been in since 2004 was being disturbed. The 1st respondent's defence was that this was his lawful property that the appellant was renting and in respect of which he had failed to pay rent. He contested the ELC's jurisdiction to hear and determine the dispute.
3. From the record that we have reviewed, there was **Business Premises Rent Tribunal No. 125 of 2015** at Embu in which the appellant had sued the 1st respondent and another over LR No. Wanguru/Township/159 and in which the Tribunal found that:-

“3. There is a landlord and tenant relationship between the applicant and the interested party by operation of law under Section 28 of the Land Registration Act 2012.”

The appellant was the applicant and the interested party was the 1st respondent. There was no appeal on the finding, and we agree with the learned Judge that this finding bound the appellant and the 1st respondent.

4. The record also shows that, according to the records of Kirinyaga County Government, LR No. Wanguru/Township/160 and LR No. Wanguru/Township 159 were one and the same parcel of land.
5. The record further shows that in Principal Magistrate's Court at Wanguru **Civil Suit No. 69 of 2013**, the appellant had sued the previous owners of LR Wanguru/Township/159 saying that he had leased it from one of them. He was opposed to them selling the property in which he claimed he had a shop and 6 back rooms, two offices, counters and a butchery. The suit clearly showed that his occupation of the premises in the instant suit was that of a tenant. He could not therefore make any claim to the suit property beyond that of a tenant under the **Act**.
6. In the appellant's appeal before us, and which appeal was urged on his behalf by learned counsel Ms. Njeri holding brief for learned counsel Mr. Maina Kagio, the substantive complaint was that the learned Judge had erred in upholding the preliminary objection by finding that there was a tenant and landlord relationship between the appellant and the 1st respondent. Learned counsel Mr. Magee, in response, submitted that the appellant had admitted in the previous suit that he was a tenant. Given that, and the finding of the Business Premises Rent Tribunal, the issue of tenancy had been settled. Therefore, learned counsel submitted, the ELC had no jurisdiction to hear and determine the dispute that the appellant had filed before it.

7. We agree with the finding by the ELC on the question of jurisdiction. We reiterate that the jurisdiction of the court is

always the primary issue that the court has to determine before it can wade into settling the merits of the dispute between the parties before it. Jurisdiction is a creature of the Constitution and statute. The centrality and importance of jurisdiction has been underscored in various decisions of this Court, as well as by the Supreme Court. We refer to **Phoenix of E.A. Assurance Company Limited -vs- S. M. Thiga t/a Newspaper Service [2019] eKLR** by this Court, and **Republic -vs- Karisa Chungo & 2 Others [2017] eKLR** by the Supreme Court, as examples of cases in which the centrality of the question of jurisdiction has been highlighted. Where a court takes upon itself to exercise a jurisdiction which it does not have, its decisions are null and void.

8. We find no merit in the appeal which we dismiss with costs to the 1st respondent.

Dated and delivered at Nyeri this 13th day of February, 2026

S. ole KANTAI

.....
JUDGE OF APPEAL

J. LESIIT

.....
JUDGE OF APPEAL

A.O. MUCHELULE

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed

DEPUTY REGISTRAR