

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC LC NO 121 OF 2018

ELGON HOUSE (2010) LTD PLAINTIFF

VERSUS

MEYA AGRI TRADERS LIMITED DEFENDANT

JUDGMENT

1. This Judgment is in respect of the plaintiff's plaint dated 21st March 2018 filed against the defendant seeking the following orders:
 - a) *An Eviction Order in respect of Nakuru Municipality Block 5/43 (Elgon House).*
 - b) *Monthly Mesne Profits at the rate of Kshs.500,000.00/= plus VAT from March 2013 until eviction*
 - c) *General damages for trespass*
 - d) *Costs of this suit and interest thereon*
 - e) *Such other relief that this Honourable court may deem just and fit to grant.*

PLAINTIFF'S CASE

2. PW 1 Kirit Govindlal Shah adopted his witness statement dated 21st March 2018, as his evidence in chief and stated that he is a Director of Elgon House Ltd, the Plaintiff herein. He further stated that the Plaintiff was incorporated in 2010, and prior to that, the Plaintiff's Directors owned the suit property known as Nakuru Municipality Block 5/43, of which they transferred to the Plaintiff.

3. It was PW1's testimony that the Directors had prior to incorporation of the Plaintiff Company, leased the suit property to the Defendant for a term of 5 years and 1 month from 1st February 2008 vide a lease dated 7th February 2008. That the term of the lease was set to expire on 28th February 2013 but was not renewed since the parties did not agree on the terms of the new lease.
4. PW1 also testified that the rent payable as per the lease agreement was Kshs.130,000/= per month with a provision of 20% increment after every 2 years and other additional charges under clause 1 (b). He stated that the defendant was paying rent regularly from 2008 to 2013, and only paid Kshs.3,640,000/= for 14 months after the lease ended in March 2013, and that the rest of the months are still outstanding.
5. PW 1 produced the list of documents dated 21st March 2018, and Pex. Nos 1 to 4 and testified that the Plaintiff received offers from potential tenants and accepted an offer from Chegeren Agencies (E.A) Ltd who agreed to lease the premises with effect from 1st March 2013, at kshs. 500,000/= per month plus VAT.
6. According to PW1, despite the Defendant being notified vide a letter dated 26th February 2013, to vacate and hand over the premises on expiry of the lease, he remained on the premises without a lease, or paying rent. That in order to circumvent the process the defendant deposited Kshs. 868,608/= into the Plaintiff's Bank account in March 2013 with a view to creating a tenancy but the Plaintiff returned the money to the Defendant.

7. PW1 urged the court to enter judgment as prayed in the Plaint plus costs and interest.
8. Upon cross-examination by Mr. Karanja, PW1 stated that before the expiry of the lease my lawyers Sheth & Wathigo offered a new lease for the premises after meeting with them, which was supposed to commence on 1st March 2013. PW 1 also told the court that the defendant deposited money into the Plaintiff's account but they returned the money to him because there was no signed lease.
9. Mr. Shah further testified that his lawyers were supposed to prepare the lease, but he did not know whether they prepared one. He also stated that he did not ask the Defendant to, and admitted that he had testified in HCC NO. 35 of 2013 which was struck out, but denied stating that he did not sign the lease as he did not want the Defendant on the premises.
10. PW1 was referred to Pex No. 2, a letter dated 26th February 2013, and stated that the same did not tell the defendant to vacate for not signing the lease. Further, on 28th February 2013, the Plaintiff attempted to evict the defendant but Mirugi Kariuki Advocates wrote a letter dated 1st March 2013, which stopped the eviction of the Defendant.
11. According to PW1, during the pendency of the suit, the defendant deposited Kshs.3,734,432/= with Sheth & Wathigo Advocates, of which he received Kshs. 3,640,000/= in rent arrears, but the Plaintiff does not have a lease with the defendant. PW1 also testified that the Defence in this case was struck out but later there was a conditional stay of execution

pending appeal where the defendant was to pay rent during the pendency of the Appeal. That between February, 2020 up to when the Appeal was determined in September 2023, the defendant was paying rent.

12. Upon re-examination by Mr. Akang'o, PW1 admitted that the Plaintiff attempted to evict the defendant on 28th February 2013, which time the lease had expired. He also stated that the letter by Mirugi Kariuki Advocates was after the lease had expired, and that the negotiations of the new lease had new terms.
13. According to PW1 he was receiving rent as per the court order, and that he would not have received the rent without the lease, as the Defendant's stay on the premises is due to a court order and not by mutual consent. He testified that he would not have a problem with the defendant being his tenant but would want a formal lease signed.

DEFENDANT'S CASE

14. DW1, Daniel Munyoroki Ngunia, adopted his witness statement dated 9th July 2018 as his evidence in chief and stated that he is the Managing Director of Meya Ltd the Defendant herein. He stated that the Plaintiff's directors leased to him the suit property for a term of 5 years and one month commencing on 1st February 2008 and terminating on 28th February 2013.
15. It was DW1's evidence that before the expiry of the lease, he engaged the plaintiff through his lawyers for the renewal of the lease, of which the lawyers were to prepare a lease for his signature. DW1 further stated that

Sheth & Wathigo Advocates wrote a letter dated 20th March 2012, whose contents arose from the negotiations on renewal of the lease.

16. According to DW1, on 28th February 2013, the Plaintiff's agents came at night to evict him, but they had not given any notice for the Defendant to vacate the premises. He stated that the premises were opened after his lawyers wrote a letter and that he continued paying rent without defaulting.
17. It was his testimony that he wrote a cheque for payment of rent for three months, which he deposited in the Plaintiff's account, but the Plaintiff returned the money. DW1 further told the court that he continued paying rent to Sheth & Wathigo Advocates after the court made an order that DW1 continues paying rent until the Court of Appeal case is heard and determined. DW1 prayed that the suit be dismissed with costs.
18. Upon cross-examination by Mr. Akang'o, DW1 stated that he did not know when he last paid rent and admitted that he had not paid rent since December 2023, but continued to be in occupation waiting for their instructions.
19. It was DW1's testimony that the letter dated 26th February 2013, from Sheth & Wathigo informed him that the lease was coming to an end and he should vacate the suit premises. It was his testimony that the letter was not Notice as per the lease agreement, and that they later received a letter dated 20th March 2012, from Sheth & Wathigo, but cannot remember whether he accepted the offer or not.

20. Upon re-examination by Mr. Karanja, DW1 stated that the letter did not require him to do a formal acceptance in writing.

PLAINTIFF'S SUBMISSIONS

21. Counsel for the Plaintiff filed submissions dated 20th January 2026 and listed the following issues for determination:
- a) Whether the Defendant is a protected tenant and whether this court has jurisdiction to hear and determine this dispute.*
 - b) Whether the continued occupation of the suit property by the defendant after the expiry of the lease is illegal and amounts to trespass.*
 - c) Whether the Plaintiff is entitled to the orders sought*
 - d) Who bears the costs of this suit?*
22. On the first issue as to whether the Defendant is a protected tenant and whether this court has jurisdiction to hear and determine this dispute, counsel relied on Section 2 of the Landlord and Tenant's (Shops, Hotels and Catering Establishments) which defines a controlled tenancy to mean a tenancy of a shop, hotel or catering establishment that is either not reduced in writing, or if it is in writing, is for a period not exceeding five years, is determinable within five years from commencement, or is specified by the Minister to be a controlled tenancy.
23. Counsel submitted that the lease having expired on 28th February 2013, and not renewed, there is no tenancy relationship between the Plaintiff

and the Defendant, hence the continued occupation of the suit premises by the Defendant is illegal.

24. Mr. Akang'o relied on the case of **Serem v Bett (Civil Appeal 48 of 2019) [2023] KEHC 17698**, where the court held that in the absence of a renewed lease agreement there no longer existed a tenancy agreement between the parties. Counsel therefore submitted that the Defendant's reliance on the court's interim order to pay rent as a foundation for claiming protected tenancy is flawed, as the doctrine of controlled tenancy presupposes the existence of either a valid contractual lease or a statutory tenancy recognized under the law.
25. Similarly, that the negotiations for a new lease never matured into an agreement and the Plaintiff expressly rejected the rent paid by the defendant and returned the money.
26. Counsel relied on Section 60 (1) & (2) of the Land Act which provides that is a lessee remains in possession of land without the consent of the lessor after the lease has been terminated, or the term of the lease has expired all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land.
27. Subsection 2 provides that a lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, shall not by reason of that fact, be deemed to have consented to the lessee remaining in possession of the land, or as having given up on any of his rights or remedies of the lessor against the lessee for breach of a covenant.

28. On the issue of jurisdiction, counsel submitted that a controlled tenancy cannot exist where the tenancy relationship had already come to an end and therefore the provisions of Cap 301 would not apply, therefore the Defendant cannot invoke the jurisdiction of the Business Premises Tribunal in this matter. Counsel relied on the cases of **D.L. Koisagat Tea Estate Ltd v Eritrea Orthodox Tewahdo Church Ltd [2015] eKLR, Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR**, and submitted that the court has jurisdiction to hear and determine this suit as the defendant is not a controlled tenant.
29. On the second issue whether the defendant's continued occupation of the suit property amounts to trespass, counsel relied on the case of **John Kiragu Kimani v Rural Electrification Authority [2018] KEELC 810 (KLR)**, on the definition of trespass, as any unjustifiable intrusion by a person upon the land of another.
30. Counsel submitted that Plaintiff is entitled to the orders sought, vacant possession and mesne profits, as the Defendant continues to deny the Plaintiff substantial income from potential lessees. The plaintiff claimed Kshs. 68,360,000/- as mesne profits being Kshs. 500,000/- monthly rent that would have been paid a new tenant (Chegeren Agencies E.A Ltd for 144 Months.
31. Mr. Akang'o relied on the case of **Kenya Hotel Properties Limited v Willesden Investments Limited (Civil Application 322 of 2006)**

[2007] KECA 401 (KLR) (9 March 2007) (Ruling) and submitted that the Plaintiff has a right to derive income from lawful occupation by a tenant and urged the court to award the Plaintiff mesne profits amounting to Kshs. 68,360,000/.

32. On the issue of damages for trespass, counsel rightfully submitted that a party who claims both mesne profits and damages for trespass, the court can only grant one and not both and relied on the case of **Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees [2020] KECA 536 (KLR)**.
33. Counsel urged the court to find that the defendant's unlawful occupation must not go uncompensated and allow the reliefs the plaintiff sought in the Plaintiff as prayed.

DEFENDANT'S SUBMISSIONS

34. Counsel for the Defendant filed submissions dated 19th December 2025, and listed the following issues for determination:
- a) Whether this Honourable Court has jurisdiction to hear and determine the dispute herein?*
 - b) Whether the Defendant is a protected tenant?*
 - c) Whether the Plaintiff is entitled to costs?*
35. Counsel reiterated the evidence of the parties and submitted on the question of the jurisdiction of the court to hear and determine this case. Counsel submitted that the Plaintiff never controverted the issue of the controlled tenancy pleaded by the defendant in its defence.

36. Mr. Karanja further submitted that it is admitted that there was a written lease between the parties from 2008 to 28th February 2013 and no written leases were executed after the expiry of the lease, hence the legal character of the Defendant's occupation changed.
37. It was counsel's submission that the PW1 admitted that he received Kshs 3,640,000/- from Sheth and Wathigo as rent arrears and further that he also received rent pursuant to a court order during the pendency of the appeal. Mr. Karanja therefore stated that the Defendant's occupation was neither clandestine nor unlawful but was known, acknowledged by and economically beneficial to the Plaintiff.
38. According to counsel, the facts of the negotiations of a new lease and the continued occupation and payment of rent made the dispute to fall within the ambit of Section 2 of Cap 301 hence the Defendant was a controlled tenant.
39. Counsel relied on the case of **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR, Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1**, and urged the court to find that this matter falls within the jurisdiction of the Business Premises Tribunal. Counsel also stated that the Plaintiff's attempt to frame the Defendant as a trespasser is inconsistent with both the pleadings and the evidence as trespass cannot coexist with acceptance of rent, negotiations for renewal and compliance with a court ordered rent payments.

40. Counsel further reiterated the parties evidence on record and submitted that the Defendant is a protected tenant guided by Section 2 of Cap 301 which defines a controlled tenancy. Counsel relied on Section 4 of Cap 301, which provides for termination or alteration of a controlled tenancy, which can only be effected through service of a statutory notice in the prescribed form and manner of which was not done.
41. Counsel relied on the cases of **Gisemba V Kenya Breweries Ltd [2015] eKLR** and **Radheshyam & Co Ltd V Prtam Singh [2005]** where the court held that where a tenant remains in occupation after expiry of a lease and the landlord continues to receive the rent, a controlled tenancy arises by operation of the law regardless of the landlord's intentions.
42. Counsel therefore submitted that this court lacks jurisdiction to hear and determine the suit as it falls under the ambit of Cap 301 at the Business Premises Rent Tribunal and should be dismissed with costs.

ANALYSIS AND DETERMINATION

43. The Defendant raised an issue whether this court has jurisdiction to hear and determine this case. When an issue of jurisdiction of the court to hear and determine a matter is raised, then the court must deal with it first from the onset as if it finds in the affirmative, then it will be forced to down its tools and not consider any other issues.

44. The court will therefore deal with the issue of jurisdiction first and if it finds in the negative then it will formulate the other issues for determination of the dispute.
45. In the case of **Owners of the Motor Vessel ‘Lillian ’(S) versus Caltex Oil (Kenya) Ltd [1989] KLR1**, the court held thus:

"Jurisdiction is everything. Without it a court has no power to make one step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction. "

46. Similarly, in the case of **Samuel Kamau Macharia & Another –vs- Kenya Commercial Bank Ltd & 2 Others (2012) eKLR** it was held that:

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.”

47. In the case of **REPUBLIC V BUSINESS PREMISES RENT TRIBUNAL & ANOTHER EX- PARTE ALBERT KIGERA KARUME [2015] eKLR** cited with approval the case of **Re Hebtulla Properties Ltd. [1979] KLR 96; [1976-80] 1 KLR 1195** where the Court dealt with the provisions of section 12 of Cap 301 as follows:

“The tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied.... The powers of the tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under section 12(1)(a) to (n). The Act was passed so as to protect tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the tribunal is to hear and determine references made to it under section 6 of the Act. Section 9 of the Act does not give any powers to the tribunal, but merely states what the tribunal may do within its area of jurisdiction..... It would be erroneous to think that section 12(4) confers on the tribunal any extra jurisdiction to that given by and under the Act elsewhere. For example it is not within the tribunal’s jurisdiction to deal with criminal acts committed in relation to any tenancy nor is it within its jurisdiction to entertain an action for damages for trespass. These are matters for the courts and the tribunal cannot by way of a complaint to it by

the landlord or tenant purport to deal with such matters. Section 12(4) of the Act must be read together with the rest of the Act and, when this is done it becomes apparent that the complaint must be about a matter the tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy.... The Act uses the words “any complaint” and the only qualification is that it must be “relating to a controlled tenancy”. Was the relationship between the appellant and the respondents a controlled tenancy”

48. Counsel for the Defendant submitted that the Defendant was a controlled tenant hence this court lacks jurisdiction to hear and determine this suit. Still on the issue of jurisdiction of the BPRT, Section 2 (1) (a) of Cap 301 defines a controlled tenancy as follows:

- i. Which has not been reduced into writing; or*
- ii. .Which has been reduced to writing and which:
-a.is for a period not exceeding five years; or
b. contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or c.Relates to premises of a class specified under subsection (2) of this section.*

49. In the case of **Jubilee Insurance co. ltd v. Joseph Ndung’u Karegat/a Leather Touch Foot Care specialist [2014] eKLR**, in which the court held that even though the defendant had continued to pay rent with respect to the demised property even after the determination of the lease, he could

not be a protected tenant hence he could not hide under the provisions of Cap 301 to continue occupying the property. Gacheru J held that:

“The Defendant avers that he is a protected tenant as provided under Cap 301 Laws of Kenya and by virtue of the provisions of the said Act, the matter herein is in the purview of the Business Premises Rent Tribunal and not this Court. It is the Defendant’s submission that on expiration of the lease, he continued occupation and payment of rent, thus he became a protected tenant and his relationship with that of the Plaintiff became a controlled tenancy. The Plaintiff refutes this claim and avers that it entered into a lease agreement with the Defendant with express terms of the duration of the lease. The Plaintiff contended that the agreement specifically provided on the commencement date being 1/10/2007 for a period of 6 years and that the same would terminate by efflux of time.”

50. The above-mentioned case is a replica of what the Defendant is hinging his claim on, that this court has no jurisdiction to hear and determine this matter due to the fact that the Defendant was a protected tenant and was under a controlled tenancy which should be handled by the Business Premises Tribunal.
51. From the evidence which has been elaborately presented by the parties and the submissions by counsel on the lease agreement between the

Plaintiff and the Defendant, it is clear that the Defendant was not a protected tenant, the lease having expired and there was no renewal of the same. It follows that this court has jurisdiction to hear and determine this dispute.

52. While the Business Premises Rent Tribunal (BPRT) handles disputes involving controlled tenancies, it loses jurisdiction once the lease has expired, leaving the ELC with the exclusive mandate to deal with the suit property's possession or any other dispute dealing with trespass and damages.
53. Having determined the issue of the court's jurisdiction to hear and determine this suit, the other issue for determination is whether the Plaintiff is entitled to the orders sought for vacant possession, mesne profits and damages for trespass.
54. The Defendant claimed that the fact that the Plaintiff accepted payment of rent due, after the expiry of the lease meant that the Defendant was in a controlled tenancy. It is on record that the Defendant's defence was struck out by the court and the Defendant filed an appeal in the Court of Appeal, which directed that the matter be remitted back to the court to be heard afresh by a judge other than the Judge who struck out the defence. The Defendant filed an application for stay of execution and the court gave a conditional stay, where the Defendant was to continue paying rent during the pendency of the appeal, failure to which the stay would lapse. The rent payment was sanctioned by the court and the Plaintiff was acting in compliance with the court order.

55. It should also be noted that the Defendant attempted to regularize/force his tenancy by depositing rent into the Plaintiff's bank account which the Plaintiff promptly returned to the Defendant. This is to show that the Plaintiff did not acquiesce to the Defendant's attempt to continue with the relationship after the expiry of the lease.
56. This case has been in court for almost ten years, where the Defendant is in occupation of the suit property without paying rent and not allowing the Plaintiff to enjoy the economic benefit of the suit property. The Defendant admitted upon cross-examination by counsel for the Plaintiff that he does not remember when he paid rent last. This is a situation where the Defendant is not paying rent and insists in occupying the suit premises to the detriment of the Plaintiff.
57. The reason why parties enter into written lease agreements with terms and conditions of termination is for ease of operationalization of the relationship, and when it is no longer tenable, there is a way to opt out. It is like a marriage, where when a couple has irreconcilable differences, they can divorce, you cannot be forced to stay in a marriage that is no longer working or tenable, and otherwise it can end up in premium tears.
58. The continued occupation of the Defendant in the Plaintiff's suit property is not tenable as the lease expired in 2013, and the same was never renewed. People buy property for their own use or for income generation. In some cases, the properties are bought via bank loans which must be serviced. I find that the plaintiff has proved that it is entitled to vacant

possession of the suit property namely Nakuru Municipality Block 5/43 (Elgon House).

59. On the issue of mesne profits, the plaintiff claimed Kshs 500,000/ per month until delivery of the property and general damages for trespass. Mesne profits is a special damage which must be specifically pleaded and proved.

60. In the case of **Luva v Kimbio & 3 others [2023] KEELC 16462 (KLR)**, the court held as follows:

“The Court has considered the pleadings and the evidence on record. Mense profits are in the category of special damages. They must be specifically pleaded and proved. The 1st Defendant did not set out the particulars of mense profits in her Counter Claim. She did not furnish the Court with any evidence on the period the Plaintiff has been on the suit property and the loss she has suffered. I therefore find that she is not entitled to mesne profits.”

61. Similarly, in the case of **Karanja Mbugua & another v Marybin Holding Co. Ltd [2014] eKLR**, the court stated as follows with regard to mesne profits:

“This court is alive to the legal requirement that mesne profits, being special damages must not only be pleaded but also proved, as shown by the provisions of Order 21, Rule 13 of Civil Procedure Act.

62. The Plaintiff pleaded in paragraph 8 and 9 of the Plaint that the defendant had denied it substantial income from interested lessees with whom they had concluded contracts of lease, and therefore was entitled to Kshs 500,000/= per month until the delivery of the property.
63. It should be noted that the Plaintiff could not have entered into a binding lease contract with a potential lessee when the issue of the Defendant giving vacant possession upon expiry of the lease had not been resolved.
64. Further it is trite that a party cannot claim mesne profits together with general damages for trespass. You must choose one as was held in the case of **Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees [2020] KECA 536 (KLR)** (supra).
65. Additionally, in the case of **Maina Kabuchwa v Gachuma Gacheru [2018] eKLR**, the court held that:
- “In respect to issue no. (d), it is trite law that where a party claims for both mesne profits and damages for trespass, the Court can only grant one and not both. Mesne Profits, which is defined as the profit of an estate received by a tenant in wrongful possession between the dates (see Black's Law Dictionary 9th edition). Mesne Profits must be pleaded and proved. In the case Peter Mwangi Msuitia & Another Vs Samow Edin Osman (2014) e KLR, the Court of Appeal held as follows:*

“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the Plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded...”

66. As to the claim for general damages, it is trite law that trespass is the act of unauthorized and unjustifiable entry upon the land in another’s possession. Trespass is actionable per se regardless of the extent of the incursion and without any necessarily showing of injury or damage to the claimant. The moment trespass is proved then you do not need to show the injury or damage that has been caused to you.

67. In the case of **Park Towers Ltd V John Mithamo Njika and 7 Others 2014 eKLR** where **Mutungi J** stated as follows:

“I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case”

68. The Defendant having continued occupation after the expiry of the lease, was now a trespasser and therefore his continued occupation was illegal as was held in the case of **Relisa Housing Co-operative Society Ltd v. Grace Atieno & another [2004] eKLR**, where the court held that:

“The lease in question was granted on the 1st July 1999 for a period of 5 years and 3 months from 1st January 1999

expiring on 31st January 2004, the defendant who was the tenant applied for renewal which was denied.

The lease cannot be extended beyond its expiry date in the absence of any agreement to that effect. In the result the defendant not having vacated the premises on the expiry date became a trespasser in the premises.”

69. Additionally, in the case of **R&K Investments v. Evanson Gitau[1998] eKLR**, where the court made a finding that defendant was a trespasser in the premises even when the plaintiff had continued to pay rent. Justice Mbogholi held that:

“If by any chance the plaintiff did not return the defendant’s money after the expiration of the lease just as it continued to receive rent upto 31st March, 1997, even after serving the notice to terminate the tenancy, it cannot be said that the plaintiff compromised or waived the expiry of the lease. If anything, that would be to the credit of the plaintiff in trying to mitigate its loss occasioned by the defendants’ failure to give up possession of the demised premises.

Whatever the case, after 31st march, 1997 there was not any relationship between the parties herein capable of being supported by any principle of law or even equity. What the defendant did by holding over was to postpone an obvious eventuality, that is, the giving up of the premises to the plaintiff.

The defendant pleaded a counterclaim against the plaintiff. In his evidence he talked of loss of a hood and profits. He however fell short of proving the same. Further, having failed to prove any fraud in relation to the alleged alteration of clause 15 of the lease, he

cannot be entitled to any damages for breach of contract. In the end the plaintiff's suit must succeed. The defendant shall deliver vacant possession of the leased premises within 7 days of service of the order. In the event of non-compliance, the plaintiff shall be at liberty to enlist the services of the court bailiff to effect the eviction."

70. I have considered the pleadings, the evidence on record and the submissions by counsel, and find that the plaintiff has proved its case against the defendant and therefore issue the following specific order:

- a) *An order is hereby issued directing the Defendant to give vacant possession of the suit property Nakuru Municipality Block 5/43 (Elgon House) within 30 days failure to which eviction orders to issue.*
- b) *General damages for trespass of kshs 5 Million to the Plaintiff.*
- c) *Costs of this suit and interest thereon.*

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE