

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC APPEAL CASE NO. E009 OF 2025

LUKA MWANGI MACHARIA.....

APPELLANT

VERSUS

FRANCIS KARUGU MUTURI.....

RESPONDENT

(Being an Appeal from the Ruling delivered on 30th May 2025 by Hon. Mike Makori (Member) in BPRT Case No. E093 of 2024-Francis Karugu Muturi v Luka Mwangi Macharia)

BETWEEN

FRANCIS KARUGU MUTURI

.....APPLICANT/TENANT

VERSUS

LUKA MWANGI MACHARIA

.....RESPONDENT/LANDLORD

JUDGEMENT.

1. Before me for determination on Appeal is a matter which was heard and determined by Hon. Mike Makori (Member) in Nakuru BPRT Case No. E093 of 2024, wherein, upon considering the evidence of both parties, vide his Ruling delivered on 30th May, 2025, the Tribunal found that the Tenant/Applicant's Application dated 5th November 2024 was merited and issued the following orders:
 - i. That Landlord/Respondent, whether by himself, his agents, servants, or assigns, is hereby restrained from interfering

with, removing, damaging, disposing of, or in any manner dealing with the movable items, fixtures, fittings, and developments installed by the Tenant on Plot No. 145, Commercial/Industrial Area Naivasha.

- ii. A joint valuation of all the Tenant's movable goods, fittings, fixtures, and developments on the said premises shall be undertaken within thirty (30) days from the date of the ruling.
- iii. Each party bear their own costs.

2. The Landlord/Appellant, being dissatisfied with the said Ruling, has now filed the present Appeal based on the following grounds in his Memorandum of Appeal:

- i. That the Honourable Tribunal erred in law by assuming and exercising jurisdiction where none existed.
- ii. The Honourable Tribunal failed to uphold the sanctity of contract and the principle of party autonomy by granting reliefs which were inconsistent with the express provisions of the Agreement dated 12th April 2023.

3. The Appellant thus prayed for the following orders:

- i. That the Appeal be allowed;
- ii. That orders of the Tribunal issued and/or delivered on 30th May 2025 be set aside.
- iii. The cost of the appeal be awarded to the Appellant.

4. The Respondent did not enter appearance or file a response to the appeal.

5. Directions were issued for the disposal of the Appeal by way of written submissions, where only the Appellant complied and filed his submissions dated 7th November 2025. He summarized the factual background of the matter and then framed his issues for determination as follows

- i. Whether the BPRT had jurisdiction to adjudicate over the matter; and

- ii. Whether the BPRT's Ruling can disregard the parties' agreement.
6. On the first issues for determination whether the BPRT had jurisdiction to adjudicate over the matter, he placed reliance on the Court of Appeal's decision in the case of **Owners of Motor Vessel "Lilian S" v Caltex oli (Kenya) Ltd (1989) KLR** to submit that once the jurisdiction is found wanting, no amount of procedural compliance or equitable intention could validate an otherwise null process. It was his submission that the BPRT did not have jurisdiction over the matter because the matter was res judicata and the agreement in question was not concerned with controlled tenancy.
7. He placed reliance on the provisions of Section 7 of the Civil Procedure Act to submit that whenever a question of res judicata was raised, a court would look at the decision claimed to have settled the matter in question; the entire pleadings and records of the previous case and the instant case to ascertain the issues that had been determined in the previous case and whether they were the same in the subsequent case and whether the parties were the same or were litigating under the same title. The court would also ascertain whether the previous case had been tried and determined by a court of competent jurisdiction. Reliance was placed on the decided case of **John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 Others [2021] KESC 39 (KLR)**.
8. He submitted that the instant matter had been filed before the BPRT, where the same dispute, over the same issues, had been adjudicated over by the Naivasha Magistrate's Court, Case No.E051 of 2023, where a ruling was delivered by Hon. Nathan Shiundu Lutta on the 27th March 2024.
9. That whereas the Appellant had at BPRT raised this issue at Paragraphs 7 and 9 of the Replying Affidavit dated 13th February 2025, the BPRT had ignored the same and gone ahead to arrogate to itself jurisdiction without due consideration, which resulted in the contested ruling.

10. His submission was that BPRT's competence arose solely in relation to disputes concerning such controlled tenancies as provided for under the provisions of Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act. The dispute before the BPRT did not concern a controlled tenancy agreement, and therefore, it lacked jurisdiction to entertain it.
11. That subsequently, where a tenancy fell outside the statutory definition (whether by virtue of expiry, lawful termination, or conversion into a new contractual agreement), it ceased to be a controlled tenancy, and the Tribunal's jurisdiction automatically lapses. That the Act did not empower the Tribunal to adjudicate upon ordinary contractual or post-tenancy disputes between former landlords and tenants. Reliance was placed in the decided cases of **Republic v Business Premises Rent Tribunal & Another ex Parte Albert Kigera Karume [2015] eKLR**, where the court had cited the case of **Re Hebtulla Properties Ltd (1979) KLR 96; [1976-80] 1 KLR 1195**, to submit that the Tribunal could not extend its reach to matters which were divorced from a controlled tenancy, and that any attempt to do so amounted to usurpation of jurisdiction.
12. In the instant case, the tenancy relationship between the parties had expressly been terminated by an agreement dated the 12th April 2023, which in essence marked a legal end of the landlord-tenant relationship. There was therefore no subsisting-controlled tenancy capable of invoking the Tribunal's mandate.
13. That what had remained between the parties was a post-tenancy contractual understanding, which properly fell under the jurisdiction of the ordinary civil courts and not the Tribunal. He hinged his reliance on the decided case of **Serem v Bett (Civil Appeal No. 48 of 2019 [2023] KEHC 17698 (KLR))** to submit that the uncontested evidence in the instant matter showed that upon termination of the tenancy by mutual agreement, the Respondent had vacated the demised premises and the Appellant had ceased to receive rent. He thus submitted that the tribunal

could therefore not resurrect a non-existent tenancy to clothe itself with jurisdiction. That subsequently, its proceedings had been undertaken without lawful authority and were void *ab initio*.

14. He further submitted that the mutual agreement had a clear, self-executing mechanism for resolving the impasse, which the BPRT had failed to observe, and proceeded to give orders that were outside the scope of the Agreement between the parties in its Ruling.
15. That in any event, even if the jurisdiction existed, the Tribunal had acted contrary to the established principles of the law of Contract by disregarding the express terms of the parties' termination agreement dated 12th April 2023. The principle of sanctity of contracts establishes that courts and tribunals cannot rewrite or vary contracts that have been freely and voluntarily entered into by parties. Reliance was placed on the case of **J N N (a Minor) M N M suing as next friend v Naisula Holdings Limited t/a N School [2018] KEHC 8304 (KLR)** to submit that in the instant case, the Tribunal had exceeded the said fundamental boundary by substituting its own discretion for the express bargain struck by the parties.
16. That the termination Agreement dated 12th April 2023 had been unequivocal in spelling out the consequences should the parties fail to agree on the valuation of the Tenant's fixtures and movables, wherein it had expressly provided that:

"In the event the parties fail to agree on the value attached, the Lessee shall be permitted to remove the movable, fixtures and fittings within 30 days from the date hereof."

17. That the aforementioned clause had precisely anticipated a scenario where the parties would not agree on the valuation. That the Agreement had thus provided a clear, self-executing mechanism for resolving the impasse, namely that the Tenant would remove his property within 30

days, with no room left for further negotiation, external intervention, or imposition of a compulsory valuation by a third party. That by purporting to reopen the said settled agreement, the Tribunal had effectively rewritten the contract, where at paragraph 16(b) of its Ruling, the Tribunal had ordered as follows:

“A joint valuation of all the Tenant’s movable goods, fittings, fixtures, and developments on the said premises shall be undertaken within thirty (30) days from the date of this ruling.”

18. The Tribunal had thus supplanted the parties’ contractual autonomy with its own sense of equity, thereby not only offending the sanctity of contract but also ignoring the parties’ negotiated exit mechanism, which had been both lawful and binding.
19. It was his submission that parties are the best judges of their own commercial interests and the terms that bind them. That the Agreement dated 12th April 2023 was a comprehensive termination document that had extinguished the prior tenancy and regulated all ensuing obligations. That once the parties had failed to agree on valuation, the Agreement expressly entitled the Tenant to remove his fixtures within 30 days, a clause that had closed the matter conclusively. That by disregarding the said clause and imposing a mandatory valuation process, the Tribunal had unlawfully inserted new terms into the contract, thereby venturing beyond its adjudicative mandate, which was outside the scope of the Agreement between the parties.
20. That whereas at paragraph 26 (sic), the Learned Member had highlighted the terms of the agreement between the parties, to the effect that they had agreed on the valuation of the fixtures and nothing more, the BPRT ordered for a joint valuation of movable goods, fittings, fixtures

and developments on the suit premises within thirty (30) days from the date of the Ruling.

21. His submission was that in safeguarding the principle of sanctity of contracts, the Court ought to find that the Tribunal's Ruling had been erroneous, for it violated the express terms of the April 2023 Agreement.
22. In conclusion, he submitted that the Tribunal's Ruling was fatally flawed, both for want of jurisdiction and for violating the sanctity of contract. That the tenancy having been lawfully terminated by the mutual agreement of 12th April 2023, no controlled tenancy had subsisted to confer jurisdiction under the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act. That indeed, even assuming that the Tribunal was clothed with jurisdiction, it had erred in rewriting the parties' clear terms by ordering a joint valuation contrary to the clause that had expressly provided that upon failure to agree, the Lessee shall be permitted to remove the movables, fixtures and fittings within 30 days.

Analyses of the evidence.

23. Francis Karugu Muturi, the Tenant/Respondent herein, instituted a suit against Luka Mwangi Macharia, the Landlord/Respondent herein, in Nakuru Business Rent Tribunal Case No. E093 of 2023 vide a Notice of Motion dated 5th November 2024 which was brought under the provisions of Article 23 (3), 40, 48 & 159 (2) (d) of the Constitution, Sections 1A, 1B, 3, 3A and 63 (c) of the Civil Procedure Act, Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Order 40 Rules 1 & 2, Order 51 Rule 1 of the Civil Procedure Rules, Rule 10 of the Auctioneers Rules, 1997 and other enabling provisions of law seeking for the following orders;
 - i. That the Honourable Tribunal do issue an Order for Valuation to be carried out on all movable and immovable goods on Commercial/Industrial Area Plot No. 145 by an

independent Valuer or, in the alternative, a joint valuation to be undertaken by Valuers appointed by the parties to ascertain the moveable and immovable goods market and forced sale value.

- ii. That the Honourable Tribunal be pleased to issue Conservatory Orders restraining the Landlord/Respondent from wasting, dealing, or in any other manner interfering with the moveable and immovable goods on Commercial/Industrial Area Plot No. 145 (“the suit premises”), situate in Naivasha, Nakuru County.
- iii. That the OCS Naivasha Police Station be directed to ensure enforcement and compliance of the Orders granted by the Honourable Court.
- iv. That the Honourable Court be pleased to make such further or other Orders as it may deem just and expedient in the circumstances of the Application.
- v. That the costs of the Application be borne by the Landlord/Respondent.

24. The Tenant’s Application was premised on the grounds therein and the Supporting Affidavit of equal date, sworn by Francis Karugu Muturi, the Tenant therein, who had deponed that around the year 2017, he had approached the Landlord to lease Commercial/Industrial Area Plot No. 145 (the Leased Premises), situate in Naivasha, Nakuru County. That thereafter, at his own expense, he had proceeded to develop structures on the Leased Premises and had established a commercial business, which had operated successfully for several years. To carry out the said developments, he had sought financing from various financial institutions to secure the necessary funds for the project and to maintain business operations.

25. That the Lease had proceeded smoothly until the year 2023, when he faced financial difficulties and started struggling with monthly rental

payments. He and the landlord subsequently entered into a new agreement on 12th April 2023, which allowed him to continue operating the business while repaying the rental debt. That, nonetheless, in blatant disregard of the Lease Agreement and all substantive procedural laws, the Respondent/Landlord closed down his business, chased away his staff and started operating the business as his own, changing the name of the business premises from “Exotica Gardens” to “Good Home Guest House.”

26. That he had then attempted to approach the Landlord with a view to appraising the value of the products that he had invested in the leased premises, with no avail. While operating the business on the Leased Premises, he had applied for all the necessary statutory approvals as required by law. Subsequently, he had been receiving notices from various legal institutions regarding overdue and unpaid fee, which was harming his reputation with the said regulatory bodies and jeopardizing his future in the industry.
27. He had sought a valuation order from the Tribunal to tally the expenditure and outlay that had been incurred during the construction and development of the Suit Premises, to arrive at a product figure that could be curtailed from the rental arrears.
28. He deponed that the grant of the prayers sought in the Application would grant the parties herein an opportunity to move on with their lives because his accrued rental arrears could easily be subtracted from the product figure of the valuation of the leased premises.
29. That he had been apprehensive of the Respondent/Landlord's continued use and occupation of his business articles within the Suit Premises, fearing that he may dispose of the same, and completely terminate any rights that he legally possesses within the leased Premises.
30. That the possession by the Respondent/Landlord of his business articles, in terms of the moveable and immovable goods within the

Leased Premises, was not justified but was unorthodox, unconventional and illegal.

31. That he had fully disclosed all material facts and evidence demonstrating his legal and equitable rights in the Suit Premises, which were currently being infringed and had been unlawfully converted by the Respondent/Landlord. That his rights were eligible for protection by a Conservatory Order of injunction from the Honourable Court, along with a Valuation Order to enable an effective and equitable termination of the Lease Agreement dated 17th August 2017 in accordance with the legal principles governing landlord-tenant relationships. That he had established a prima facie case to warrant the reliefs sought.
32. In response and in opposition to the Application, the Respondent/Landlord, through his Replying Affidavit dated 13th February 2025, deponed that the Application was frivolous and devoid of merit. That there having existed a Lease between the parties which governed their relationship and engagement, and which lease had been terminated by mutual consent on account of rent arrears totaling Kshs. 1, 585, 000/=, the dispute did not therefore fall within the ambit of Cap 301. The court hence lacked jurisdiction to hear and determine the claim.
33. He deponed that the parties had actively litigated before the Naivasha Chief Magistrate's Court following the institution of a suit by the Tenant/Applicant in Naivasha Land Case No. E051 of 2023. That accordingly, the Tenant was simply forum shopping, having failed at his first attempt in the Chief Magistrate's Court.
34. That in any event, although clause 1 of the Agreement dated 17th August 2017 and clause 1 (i) of the Agreement dated 6th December 2018 had allowed the Applicant to make improvements on the said premises, upon termination of the lease, the Applicant was not to alter, remove and/or part with the said improvements. That whilst the parties had agreed to value the movables, the same should not be construed to

include the improvements. He had not gone against the terms of the agreement in any way.

35. That the issues that had been raised in the Tenant's Application required the tabling of evidence and cross-examination of the parties to enable any determination on the rights of the parties herein, thus the orders that had been sought had not been attainable. The Tenant/Applicant, having taken up the demised premises and having accrued rent arrears, had remained duty-bound to repay the same as had been agreed between the parties. That he had notified the Tenant/Applicant of his indebtedness, vide a letter dated 6th April 2023, and advised him to remedy the same or suffer the consequences. It subsequently became apparent that the Tenant/Applicant had come to court with unclean hands; thus, his application was an abuse of the court's process and should be dismissed with costs.
36. That whereas the Applicant had sought injunctive orders which are equitable in nature, the same must be exercised judicially. The Applicant, having failed to demonstrate payment of rent arrears and having admitted that he had defaulted, came to court with unclean hands. He who seeks equity must do equity. Having sought an equitable relief, the Applicant was undeserving of the orders that had been sought.
37. That in any event, there lacked *prima facie* evidence to suggest that the repossession of the premises had been improper/or unwarranted. This dispute, therefore, was not one for the issuance of an injunction order because the Applicant could be compensated by way of damages if it was established that the repossession of the demised premises was irregular. On the other hand, the Applicant had affirmed that he had been facing financial difficulties and could not pay the rent arrears; he thus lacked the capacity to pay the outstanding rent and damages payable to the Respondent/Landlord. That subsequently, the balance of convenience had tilted in his favour, and the Tenant's Application should be dismissed with costs.

Determination.

38. I have considered the record of the appeal, the holding by the Business Premises Rent Tribunal (BPRT), the written submissions by learned Counsel for the Appellant, the authorities cited and the applicable law. I have also considered the fact that although this appeal is unopposed, it must be decided on its merit. Conscious of my duty as the first Appellate Court in this matter, I have to reconsider the decision Appealed against, assess it and make my own conclusions as was stated by the Court of Appeal in **Paramount Bank Limited vs. First National Bank Limited & 2 Others (Civil Appeal 468 of 2018) [2023] KECA 1424 (KLR)** where the court held as follows;

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the Civil Procedure Act, a first Appellate Court can appreciate the entire evidence and come to a different conclusion.”

39. A summary of the legal dispute between Francis Karugu Muturi (Tenant/Respondent) and Luka Mwangi Macharia (Landlord/Appellant) before the Nakuru Business Rent Tribunal (Case No. E093 of 2023) was that in an application dated the 5th November 2024, the Tenant moved to the Tribunal seeking orders for a valuation of all movable and immovable goods on the suit premises (Plot No. 145, Naivasha) and conservatory orders to stop the Landlord from interfering with those goods.

40. The background of the matter is that Respondent /Tenant leased the land in 2017 and named his business "Exotica Gardens". He developed the structures therein at his own expense and took loans to fund the project. Subsequently, in the year 2023, due to rent arrears, the Respondent claims that the Appellant illegally shut down his business, chased away staff, and rebranded it as "Good Home Guest House."
41. The Respondent argued that a valuation was thus necessary so that the value of his developments and business articles could be used to offset his rental arrears. He feared that the Appellant would dispose of his assets, infringing on his legal and equitable rights. He maintained he had a *prima facie* case for an injunction.
42. In his Replying Affidavit dated 13th February 2025, the Appellant sought the dismissal of the application, arguing that it was frivolous and an abuse of the court process. He claimed that the Tribunal lacked jurisdiction to try the matter because the lease was terminated by mutual consent due to arrears of Kshs. 1,585,000/= . He also accused the Respondent of forum shopping, noting that they had already litigated the same matter in the Naivasha Chief Magistrate's Court, Case No. E051 of 2023.
43. He pointed out that under their agreements of the year 2017 and 2018, any improvements made to the premises were not to be removed or altered upon termination. He argued that since the Respondent had admitted to defaulting on rent, he had "unclean hands" and was not entitled to the equitable relief of an injunction.
44. He asserted that if the repossession was found to have been irregular, the Respondent could be compensated for damages. Conversely, the Respondent's admitted financial instability meant he could not pay him damages if he lost, thus tilting the balance of convenience in his (Appellant's) favour.
45. I find the issues that stand out for my determination as follows;

- i. Whether the Honourable Tribunal had Jurisdiction to Hear and Determine the Application, if so;
 - ii. Whether the Respondent/Tenant had established a *Prima Facie* Case for the Grant of the Conservatory /Injunctive Orders.
 - iii. Whether the Respondent/Tenant was entitled to an Order for Valuation of the fittings, fixtures, and developments on the said premises.
46. On the first issue for determination, the Business Premises Rent Tribunal (BPRT) is a quasi-judicial body established under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301). This means it has some judicial powers to resolve disputes related to controlled tenancies. While the BPRT's primary function is to handle rent disputes and related matters, it also has the power to issue orders, including injunctions, to ensure its decisions are enforced and to protect the rights of both landlords and tenants in controlled tenancies. Injunctions can be used in various situations, such as preventing unlawful eviction, restraining distress for rent, and/or preserving the status quo. Indeed, in the persuasive case of **Republic v Business Premises Rent Tribunal & another Ex parte Albert Kigera Karume [2015] eKLR**, Justice G V ODUNGA (as he then was) held as follows;

“The Court under section 2 of the said Act is expressed to mean “the High Court or a subordinate court, acting in the exercise of its civil jurisdiction. These provisions when read together clearly supports the view that under the current Constitutional dispensation in the absence of express limitation of the jurisdiction of the Tribunal, the Business Rent Tribunal is clothed with the jurisdiction to grant temporary injunctions.

I therefore associate myself with the decision of the Court of Appeal in John Mugo Ngunga vs. Margaret M. Murangi (supra) that:

On the jurisdiction of the Tribunal to issue an order of injunction, it is clear the Judge was right, the jurisdiction is provided for by the Act and that was further fortified by the aforesaid decision of this Court.”

47. The Jurisdiction of the Business Premises Rent Tribunal is conferred by Section 2(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, which defines a controlled tenancy as follows:

“Controlled Tenancy means a tenancy of a Shop, 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 provision for termination, otherwise than for breach of covenant within five years from the commencement thereof”

48. In effect thereof, a tenant can be a protected tenant even if there's no formal written agreement between them and the landlord, under specific circumstances for example through implied tenancy where a tenant occupies a shop, hotel, or catering establishment and pays rent to the landlord, who accepts that rent signifying that there exists a landlord-tenant relationship and therefore the action that matters more than words is the fact that rent is paid and accepted even if nothing is written down.

49. However, the protection offered in the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is not absolute, and Landlords still have rights, but they are more regulated when it comes to

controlled tenancies, for example, an arbitrary increase in rent or eviction of the tenant without following specific procedures.

50. Having said that, and having considered what transpired at the tribunal, can it be said that there exists a landlord-tenant relationship in the instant matter? It is not in dispute that a landlord-tenant relationship existed between the parties from 2017 to 2022, for a period of 5 years. While the Respondent confirms he approached the Appellant to lease the land, the Appellant, on the other hand, admits that there had been written agreements dated 17th August 2017 and 6th December 2018 and therefore under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301), this was a "controlled tenancy" because it was a commercial lease for a shop/business.
51. While the Appellant argues that the relationship ceased to exist when the lease was terminated by "mutual consent" due to the Kshs. 1,585,000/= rent arrears and the parties are no longer "Landlord and Tenant," but rather "Creditor and Debtor and that the the Business Rent Tribunal had no power to hear the case, the Respondents' position was that the relationship legally continued because there had been a new agreement made on 12th April 2023, which allowed him to continue operating while paying off the debt.
52. The said agreement of 12th April 2023 had stipulated as follows;

WHEREAS:

The Parties herein have resolved to terminate the aforementioned lease agreement on the following terms;

- a) The Lease Agreement has been terminated by mutual consent.*
- b) The Lessee shall give vacant possession upon the execution hereof.*

WHEREAS:

The Parties herein shall agree on the following:

- a) Improvements*

- i. *The parties herein shall jointly agree on the value attached to any movables, fixtures and/or fittings forming part of the improvements on the demised property.*
- ii. *Having agreed on the value attached, the Parties may elect to have the Lessor retain the said items so as to offset the rent arrears payable by the Lessee.*
- iii. *In the event the parties fail to agree on the value attached, the Lessee shall be permitted to remove the movables, fixtures and fittings within 30 days from the date hereof.*

b) The rent arrears as per the Lessor is Kshs. 1, 585,00/=

53. Having regard to the specific terms of the Termination Agreement dated 12th April 2023, in comparison to the Tribunal's primary function under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, herein referred to as Cap 301, which is to regulate *subsisting* controlled tenancies—specifically to protect tenants from arbitrary eviction or rent hikes, I find as follows;

54. Clause (a) of the 12th April 2023 agreement explicitly stated that "*The Lease Agreement has been terminated by mutual consent.*" The effect of this clause was that once the lease was terminated by a signed settlement or mutual agreement, the "Landlord-Tenant" relationship governed by the Act ceased to exist. The parties were therefore no longer operating under a "controlled tenancy" but under a Settlement Agreement (Contract) where the Tribunal therefore ceased to have jurisdiction to enforce a purely contractual settlement because the the tenancy was now dead.

55. Clause (b) of the agreement further stated that "*The Lessee shall give vacant possession upon the execution hereof.*" This essentially meant that the Respondent waived his right to the protections of the Tribunal regarding occupation. The BRT's main power is to grant injunctions to

prevent eviction. It is not disputed that the Appellant already took possession of the premises and even renamed it, and therefore there was no threatened eviction for the Tribunal to stop.

56. The agreement thus shifted from Tenancy law to contract law at Section (a) i-iii which thus created a specific contractual mechanism for dispute resolution by specifying for a joint valuation failure to which the Respondent had a right to remove the movables, fixtures and fittings within 30 days. This meant that, if the Appellant blocked the Respondent from removing these items, as alleged, the action constituted a Breach of Contract or an illegal Conversion of Goods, rather than a tenancy dispute. To this effect, claims for breach of contract and special damages, such as the value of fixtures, are typically handled by the Civil Courts rather than the Tribunal.
57. It is not doubtful that while the BRT can handle rent disputes, the new agreement of 12th April 2023, as rightly put by the Appellant, created a debt recovery matter which was based on a terminated lease. Since the Tenant admitted the debt in the agreement, the dispute is no longer about "how much rent is owed" under the Act, but "how to enforce the settlement."
58. In the end, I find that the Tribunal did not have jurisdiction to adjudicate over the matter because the 12th April 2023 agreement replaced the Lease and the dispute was now about the interpretation and enforcement of a settlement agreement, which is a matter for the Civil Courts.
59. Secondly, since the tenancy was terminated by mutual consent, the Tribunal had no controlled tenancy left to protect or regulate and therefore had become functus officio. Since the Respondent was essentially seeking Specific Performance of the valuation clause or Damages for Conversion of his movables, I hold these were remedies for the civil courts.

60. In **Pritam vs Ratilal & Another (1972) EA 560**, the Court of Appeal held as follows; -

“Therefore, the existence of the relationship of Landlord and Tenant is a prerequisite to the application of the provisions of the Act. Where such a relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by the Tribunal. Otherwise, the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in Section 2 to which the provisions of the Act can be made to apply outside it; the Tribunal has no jurisdiction”.

61. Further, in the celebrated case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**, the Court of Appeal held as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or

tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”

62. Having found that the Business Premises Rent Tribunal at Nakuru had no jurisdiction to adjudicate on the matter, I need not venture into the other issues for determination as herein above captioned. I thus find in favour of the Appellant, and allow his Appeal as prayed. The orders of the BPRT issued and/or delivered on 30th May 2025 are set aside. The Appellant shall have the cost.

Dated and delivered via Microsoft Teams at Naivasha this 19th day of February 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE