

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO. E060 OF 2025

DAVID THAIRU MAINA - **APPELLANT/TENANT**
VS
ADMINISTRATORS OF THE
ESTATE OF BERNARD ODIPO
[deceased] -
RESPONDENT/LANDLORD

JUDGMENT

1. This appeal arises from the decision of the Business Premises Rent Tribunal (hereinafter referred to as the Tribunal) by the Honourable Joyce Akinyi Osodo, delivered on 21/2/2025.
2. The Appellant is the tenant who leased the premises from the Respondent, herein referred to as the Landlord. The Appellant initiated proceedings before the Tribunal by way of a Reference dated 8/9/2024, contesting the Respondent's notice to terminate the tenancy issued on 9/8/2024. The notice relies on grounds that the Landlord intends to repossess the premises for personal use, that the applicant has sublet the premises without the Landlord's prior consent, and that the applicant has bypassed the electricity meters.
3. The Reference was heard, and in accordance with the Ruling delivered on 21/2/2025, Honourable Joyce Akinyi Osodo

dismissed the Reference. The Landlord/Respondent was ordered to issue the sub-tenants with proper notices of termination of tenancy in the prescribed form under Section 4 (2) of Cap. 301, Laws of Kenya. The Respondent was further awarded costs of Kshs25,000/=

4. The Appellant, dissatisfied with the said orders of the Tribunal, filed this appeal by way of the Memorandum of Appeal dated 20/3/2025. In the Memorandum of Appeal, the Appellant, amongst other grounds, asserts that;
 - a. The Tribunal erred in law and in fact by upholding the Respondent's Notice to Terminate Tenancy dated 9/8/2024.
 - b. The Tribunal erred in law and in fact by failing to find that the Respondent's Notice to Terminate Tenancy did not contain sufficient grounds as envisaged under Section 7 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap. 301 Laws of Kenya.
 - c. The Tribunal erred in fact by finding that the Appellant has not provided sufficient proof that he remains in lawful occupation of the premises despite showing evidence through payment of monthly rent.
 - d. The Tribunal erred in fact by finding that the Appellant has sub-let the subject premises to third parties.
 - e. The Tribunal erred in law and in fact by relying on an alleged order cited in BPRT Case No. 381 of 2014 to

arrive at its decision, whereas such order was not produced before it as material evidence.

- f. The Tribunal erred in law and in fact by failing to consider the evidence on record showing that the Appellant has been settling all the electricity bills of the premises.
 - g. The Tribunal erred in law and in fact by failing to address the Appellant's alternative prayer for refund of rent deposit of Kshs. 90,000/= and goodwill of Kshs. 650,00/= paid at the start of the tenancy.
 - h. The Tribunal erred in law and in fact by dismissing the Appellant's reference dated 6/9/2024.
5. For the above reasons, the Appellant prays that;
- a. This appeal be allowed.
 - b. The Ruling dated 21/2/2025 delivered by the Honourable Joyce Akinyi Osodo (Chairperson) be set aside.
 - c. Any further orders that this Honourable Court may deem fit and just in the circumstances of the case.
 - d. The Costs of the Appeal be provided for.
6. On 18/9/2025, with the consent of the parties, this court directed that the appeal be canvassed by way of written submissions. The Appellant and the Respondent complied and filed their written submissions dated 15/9/2025 and 27/10/2025, respectively.

The written submissions

7. Counsel for the Appellant outlined four issues for the court's consideration: the first is whether the Tribunal erred in law and fact by upholding the Landlord's termination notice dated 9/8/2024. The Appellant cites Section 4 (2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap. 301, which requires that a termination notice must disclose genuine grounds as provided under Section 7 of the Act.
8. He contends that although the Respondent alleged repossession for personal use but provided no evidence of genuine intention to occupy, reconstruct, or redevelop as required under Section 7 (1) (g) of the Act. The appellant cites the case of Stephen Thiongó -vs- George Gor Choro (2021) eKLR cited the case of Fisher -vs- Taylors Furnishing Sores Ltd (1956) 2 All ER 78 where the court held that ;

“there must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things;

- i) to demolish the premises comprised in the holding;
- ii) to reconstruct the premises comprised in the holding; or to demolish a substantial part of the premises comprised in the holding;
- iii) to reconstruct a substantial part of the premises compromised in the holding;

- iv) to carry out substantial work of construction on the holding; iv) to carry out substantial work of construction on a part of the holding.
9. The Court further stated that the Landlord must prove that he could not reasonably do so without obtaining possession of the holding. The Appellant submits that although the Tribunal relied on an alleged order in BPRT Case No. 381 of 2014 directing the Appellant to vacate, that order was not proved in evidence. He therefore accuses the Tribunal of relying on extraneous material, thus occasioning a miscarriage of justice.
 10. The second issue is whether the Tribunal erred in finding that the Appellant had sublet the premises without consent. The Appellant submits that the Respondent relied on letters to third parties, but these were not tenancy agreements, rent receipts, or proof of the transfer of possession. The Tribunal therefore erred in law by treating unverified correspondence as proof of subletting, contrary to Section 107 of the Evidence Act. The Appellant demonstrated that all businesses in the premises had staff on payroll, not independent subtenants. The Tribunal therefore misapprehended the evidence.
 11. The third issue concerns whether the Tribunal erred in failing to appreciate that the Appellant had paid all electricity bills and that no evidence of bypassing was produced. The Appellant submits that he provided evidence of consistent payment of electricity bills. The Respondents, however, relied on the KPLC bill in the name of the late Mr Odipo, not the

Appellant, without showing that the alleged arrears arose from the Appellant's occupation. No inspection report, technical evidence, or even a KPLC witness was called to establish the alleged bypassing of the electric meters. The Tribunal therefore shifted the burden of proof onto the Appellant instead of the Respondent.

12. The final issue is whether the Tribunal erred in failing to consider the Appellant's alternative prayer for refunds of goodwill and rent deposit. The Appellant faults the Tribunal for ignoring the prayer for a refund of the goodwill of Kshs. 650,000/= and a rent deposit of Kshs. 90,000/=, in the alternative. That the Tribunal ignored this prayer entirely, contrary to the principle that courts must pronounce themselves on all material issues. The Tribunal denied the Appellant relief for monies rightfully paid at the inception of the Tenancy. Even if the court were to assume that the notice of termination was proper, the Respondent would still be under a legal duty to refund the goodwill and deposit paid by the Appellant. He argues that the Respondent has not demonstrated any lawful basis to retain Kshs. 740,000/=. To the contrary, retention of this amount would amount to unjust enrichment and offend the equitable principle that one should not profit at the expense of another without lawful justification.
13. The Appellant therefore prays for the following orders: a) That the appeal be allowed; b) That the Tribunal's ruling dated

21/2/2025 be set aside; c) That the court declare the termination notice dated 9/8/2024 invalid and unenforceable; d) Without prejudice to the Appellant's primary prayer that the termination notice be set aside, if the court is minded to uphold the termination, order the refund of Kshs. 740,000/= to the Appellant, with interest at court rates from the date of the termination notice; e) That the Appellant be awarded the costs of this appeal and the proceedings below.

14. The Respondent submits that three issues arise for determination in relation to the Appellant's Appeal. The first issue is whether the Honourable Tribunal erred in fact and law by upholding the Respondent's right to terminate the tenancy under the provisions of Section 7 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 of the Laws of Kenya. The Respondent cites Section 7(1)(c) of the Act, as well as Clause 5 of the Tenancy Agreement, which provides that the Appellant shall not sub-let, transfer or part with the shop, or charge any goodwill, at the end of the tenancy agreement. He argues that the Appellant did not provide any proof of ownership of the business relationship between him, his business Zenamed Pharmaceuticals, and the three businesses to which he had illegally sublet the premises. The Respondent submits that the three businesses were indeed separate entities owned by the persons to whom the demands for vacant possession were sent.

15. The Respondent further avers that the Appellant failed to meet electricity costs, contrary to Clause 4 of the Tenancy Agreement, which led to a demand from KPLC for an unpaid electricity bill of Kshs. 146,108.38. The Appellant did not provide any proof before the Honourable Tribunal of having paid electricity bills and water bills. The Appellant attached documents allegedly showing payment of rent and bills. The Respondent submits that the payments attached were for the sum of Kshs. 40,000/-, whereas the rent agreed as per Clause 1(a) of the Tenancy Agreement with the Landlord was Kshs. 45,000/- per month.
16. The Respondents further submit that the Appellant's sub-tenants have continued to occupy the suit premises on the basis of the reference filed before the Tribunal as well as this Appeal, and not by the consent of the Respondents herein, hence the need to continue paying rent during the pendency of these proceedings. The Respondents therefore submit that the unlawful sub-letting of the premises by the Appellant, coupled with the failure to pay electricity bills, was in breach of the Tenancy Agreement and thus a valid ground for repossession. As termination on the basis of repossession is a justifiable ground of termination, the Respondent submits that the Tribunal cannot be faulted.
17. The second issue concerns whether the Tribunal erred in fact and law by holding that the Appellant herein had failed to prove that he remains in lawful occupation of the suit

premises without subletting, and that he had not contested the order issued in BPRT Case No. 381 of 2014 directing him to vacate the premises. The Respondent submits that the Appellant filed a case at BPRT Case No. 381 of 2014, which was withdrawn with an Order from the Tribunal that the Appellant herein vacates the subject premises. The Respondent argues that the Appellant was indeed aware of the existence of the said case, that he never rebutted this position and/or denied this fact, and that he had illegally sub-let the premises to third parties and therefore could not be in occupation of the premises. The Respondent submits that the Appellant's belated attempt to deny the order to vacate issued in BPRT Case No. 381 of 2014 is an attempt to mislead this Court.

18. The final issue is whether the Appellant is entitled to the alternative prayer for the refund of the alleged rent deposit of Kshs. 90,000 and goodwill of Kshs. 650,000/=. The Respondent submits that, pursuant to Clause 8 (i) of the Tenancy Agreement, the Appellant was to pay a sum of Kshs. 785,000/=, comprising rent for the month of August, a security deposit and a facilitation fee. The Respondent further submits that rent cannot be refunded, the facilitation fee was never stated as refundable, and there was no mention of any goodwill in the Agreement. The Respondent therefore submits that the Appellant is not entitled to the refund of these sums.

19. With respect to the Security deposit of Kshs. 90,000/=, the Respondent avers that Clause 1(d) of the Tenancy Agreement provided that the deposit was refundable only at the end of the tenancy, subject to the Appellant having cleared any arrears and/or outstanding debts. In view of the unpaid electricity bill of Kshs. 146,108.38 from KPLC in July 2024, which the Appellant has not cleared to date, the deposit cannot be refunded. In any event, the Appellant has sublet the premises to sub-tenants who remain in occupation to date owing to these proceedings. The Appellant's claim for refund is therefore unfounded and cannot be upheld. The Respondent urges the court to uphold the Tribunal's decision.

Analysis and determination

20. I have considered the grounds of appeal, the record of appeal, the written submissions and the authorities cited. I find that the issues for determination are:

- a. Whether there was a valid notice issued to terminate the tenancy.
- b. Whether the Judgment of the tribunal was against the weight of evidence tendered at the Tribunal.
- c. Whether the appeal has merit or not.

Whether there was a valid notice issued to terminate the tenancy

21. This being a first appeal, it is the duty of this court to re-analyse the case and draw its own independent conclusion as

was held in Paramount Bank Limited vs First National Bank Limited & 2 others (2023) KECA 1424 (KLR) that:

“... 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...”

22. Regarding the first issue, it is not in dispute that the Respondent issued notice dated 9/8/2024 to the Appellant. Its effective date was given as 1/11/2024. The reasons given by the Respondent for terminating the tenancy were that: i) the Landlord wants to repossess the premises for personal use, ii) subletting the premises without the Landlord’s consent, and iii) bypassing electricity meters.
23. I have perused the said notice. The same was expressed to be brought under Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301 Laws of Kenya (“hereinafter referred to only as “the Act”). The same provides as follows: -

“4(2) Landlord who wishes to terminate a controlled tenancy or to alter, to the detriment of the tenant any term or condition in or right or service enjoyed by the tenant under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.

24. Section 4(4) of the said Act provides that;

No tenancy notice shall take effect until such date not being less than two months after the receipt thereof by the receiving party as shall be specified therein.

25. Further, Section 4(5) of the Act provides: -

A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing within one month after the date of receipt of the notice whether or not he agrees to comply with the notice.

26. Regulation 4(1) of the Landlord and Tenant (Shops forms and procedure) Regulations provides that the notice under Section 4(2) of the Act by a Landlord shall be in Form A in the schedule of those regulations.

27. In the case of Fredrick Mutua Mulinge t/a Kitui Uniform -vs- Kitui Teachers Housing Cooperative Society Limited [2017] KEELC 1941 (KLR) Okongó J (as he then was) cited the case of Narshidas & Company Limited -vs- Nyali Air

Conditioning and Refrigeration Services Limited Civil Appeal No. 205 of 1995 where the court stated as follows:-

“The Landlord and Tenant (Shops, Hotels & Catering Establishment) Act Cap 301 Laws of Kenya lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant and the notice must also specify the grounds upon which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice...The notice to quit purportedly relied on by the defendant in this appeal is by no means a notice which in any way complies with Form A as prescribed in the Act. Such notice can only have been given pursuant to the provisions of section 7(1)(g) of the Act. The notice to quit given or issued by the defendant was clearly void and had no effect in law on the plaintiff’s tenancy, and the plaintiff was under no duty, legal or otherwise, to react to it.”

28. Having looked at the Landlord's notice to terminate tenancy, I am satisfied that the same complied with all the requirements of Section 4(2), 4(4) and 4(5) of the Act as well as regulation 4(1). I therefore find that the notice to terminate the tenancy dated 9/8/2024 was valid under the Act.

Whether the decision of the Tribunal was against the weight of evidence tendered in the Tribunal

29. In determining this issue, I will refer to the grounds for termination of the tenancy. The first ground was that the Landlord wanted to repossess the premises for personal use.

30. Section 7(1) (g) of the Act allows the landlord to terminate a tenancy on the grounds that;

“the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.”

31. What the Tribunal was supposed to determine on this ground was whether the Respondent had established an intention to occupy the suit premises for a period of not less than one year for the purposes of its own business.

32. The objective of the Act is set out as follows:

“An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto (emphasis added).”

33. As stated in the case of Eldomart Holdings Limited -vs- Ticket Company Limited [2019] KEELC 4412 (KLR);

‘the legislature left no doubt that the Act was enacted for the purposes of protecting tenants. This court must have the said objective in mind while interpreting the Act. The burden was upon the Respondent to establish that they had an intention of occupying the suit premises for a period of not less than one year for the purposes of its own business. In the case of Auto Engineering v Gonella (1978) KLR 248, it was held that the onus is on the landlord to establish a firm and settled intention to occupy the premises held by a tenant.’

34. I have carefully reviewed the evidence placed before the Tribunal. I am not satisfied that the Respondent established a firm and settled intention to occupy the suit premises for its own business. There is no evidence that the intention was to occupy the suit premises for the Respondent’s own use. The Tribunal, despite stating the provision, did not make a finding as to whether the Respondent had established an intention to occupy the suit premises. It is my finding that the Respondent did not prove the first ground for terminating the tenancy.

35. The second ground for termination is subletting the premises to third parties without the Respondent’s consent. Clause 5 of the Tenancy Agreement states that:

“The sub-tenant shall not sub-let, transfer or part with the shop or charge any good will at the end of Tenancy Agreement.”

36. As noted by the Tribunal, Section 7 (1) (c) of the Act permits a landlord to terminate a tenancy if the tenant has breached the fundamental terms of the tenancy. I agree with the Tribunal that the Appellant proved his relationship with the three (3) sub-tenants as alleged. Despite alleging that he has ventured into other businesses, no such evidence was adduced. The Respondent, on the contrary, adduced the termination notices served upon the three (3) sub-tenants pursuant to Section 5 (2) of the Act. I find no basis for faulting the Tribunal’s finding on this ground.
37. The final ground was that electricity meters were bypassed. Other than attaching the Billing Statement, the Respondent did not adduce any evidence to prove the alleged bypass of electricity meters. In any case, bypassing electricity meters is illegal and constitutes a serious criminal offence under the Energy Act of 2019. The Respondents have not shown that they reported the offence to the relevant authorities.
38. As for the alleged order to vacate issued in BPRT Case No. 381 of 2014, the issue was not a ground for terminating the tenancy. Therefore, there was no basis for referring to it, especially since it was not adduced before the Tribunal.
39. Having evaluated the Tribunal’s findings and the evidence on record, it is my finding that the Respondent proved the second

ground for terminating the tenancy. It is therefore my finding that, based on the evidence adduced before the Tribunal, the Tribunal was justified in arriving at the decision to terminate the tenancy for sub-letting the premises without the Respondent's prior consent.

40. **Final orders for disposal**

- a. It is on that basis that I find this appeal lacking in merit, and the same is hereby dismissed.
- b. The costs are in favour of the Respondent.

41. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12^H DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI
JUDGE

Delivered Online in the Presence of:

1. Mr Kabugu for the Appellant
2. Mr Owuor for the Respondent
3. CA- Ms. Yvette Njoroge