



**Amirali v Nyatangi t/a Benon Enterprises Hardware (Civil Appeal E032 of 2026) [2026] KEHC 3270 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3270 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL E032 OF 2026  
RN NYAKUNDI, J  
MARCH 9, 2026**

**BETWEEN**

**HUZEFFA AMIRALI ..... APPELLANT**

**AND**

**BENEDICT SIMEON ONDIEK NYATANGI T/A BENON ENTERPRISES  
HARDWARE ..... RESPONDENT**

*(Being an Appeal from the Ruling of the Hon. Daniel S. Sifuna delivered on 25th February 2026 in Eldoret MCCCmisc No. E271 of 2025)*

**RULING**

1. Before this court is a Notice of Motion expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B & 3A of the Civil Procedure Act dated 26<sup>th</sup> day of February 2026 seeking the following orders:
  - a. Spent.
  - b. That there be a stay of execution of the orders issued on 25<sup>th</sup> February 2026 pending hearing and determination of this application.
  - c. That, there be a stay of execution pending hearing and determination of the intended appeal.
  - d. That costs be in the appeal.
2. Which application is based on the grounds set out among others: -
  - a. The Applicant has filed an arguable appeal with high chances of success.
  - b. The impugned orders compel restoration of premises despite the existence of a lawful decree adopted from the Business Premises Rent Tribunal.



- c. The Tribunal judgment validated termination of tenancy and entitled the landlord to possession and mesne profits.
  - d. Execution complained of was undertaken pursuant to a valid court decree and lawful process.
  - e. A new tenant is already in occupation, and restoration orders will occasion chaos, breach third-party rights and expose the Applicant to multiple claims.
  - f. Unless stay is granted, the appeal will be rendered nugatory.
  - g. The Applicant stands to suffer substantial loss including denial of rental income and interference with proprietary rights.
  - h. The application has been brought without unreasonable delay.
  - i. The Applicant is willing to comply with any reasonable conditions on security as the Court may direct.
3. In support of the application is the annexed affidavit of one Huzeffa Amirali who deponed as follows:
- a. That I am the Appellant/Applicant herein and therefore competent to swear this affidavit.
  - b. That I am the landlord of the suit premises which were previously occupied by the Respondent as a tenant.
  - c. That, the tenancy dispute between myself and the Respondent was heard and determined by the Business Premises Rent Tribunal.
  - d. That on 1<sup>st</sup> July 2025, the Tribunal delivered judgment:
    - i. Dismissing the tenant's complaint
    - ii. Declaring the termination notice valid
    - iii. Granting possession of the premises to me; and
    - iv. Awarding me profits payable by the Respondent.
  - e. That, the said judgment was subsequently adopted as a decree of the court
  - f. That despite the lawful judgment, the Respondent failed and/or refused to comply with the Tribunal orders including payment of mesne profits and vacating the premises.
  - g. That execution by the landlord was legal and undertaken pursuant to a valid decree.
  - h. That on 25<sup>th</sup> February 2026, the trial court delivered a ruling declaring the execution illegal and ordered restoration of the Respondent's goods within forty-eight (48) hours.
  - i. That I am dissatisfied with the said ruling and have lodged an appeal against the whole decision.
  - j. That the intended appeal raises serious and arguable issues including whether a court can invalidate execution founded upon an existing and unchallenged decree.
  - k. That the suit premises have since been lawfully leased to a new tenant who is already in occupation.
  - l. That compliance with the impugned orders would:
    - i. Disrupt the rights of an innocent third party



- ii. Expose me to multiple legal claims
  - iii. Cause substantial financial loss through loss of rent; and
  - iv. Render the intended appeal nugatory.
- m. That unless stay of execution is granted, I risk contempt proceedings despite acting pursuant to a lawful court decree.
  - n. That, this application has been made without unreasonable delay.
  - o. That I am willing to comply with any reasonable conditions as to security that this Honourable Court may impose.
  - p. That it is in the interests of justice that stay of execution pending appeal be granted.
4. The Application was opposed by way of a Reeplying Affidavit sworn by one Benedict Simion Ondiek Nyatangi who deponed as follows: -
- a. That I am the respondent in this appeal and I am competent to swear this affidavit.
  - b. That I have read the application dated 26/2/2026 and had the same explained to me by my counsel Mr. Momanyi and having understood it wish to reply thereto.
  - c. That the application and the appeal are incompetent.
  - d. That post 2010 the honorable court is devoid of jurisdiction to handle a dispute over premises which are the subject of business premises.
  - e. That the dispute arose from the business premises tribunal whose decision was the subject of adoption and the dispute in the subordinate court.
  - f. That the appellant can only appeal to the environment and land court not this honorable court.
  - g. That the dispute relates to illegal distress for rent and the illegal removal and disposal of my stock in the premise's premises.
  - h. That the dispute is purely a dispute over land particularly a lease over business premises.
  - i. That no execution nor legal distress for rent has taken place despite the decision of the tribunal having been unprocedurally and illegally adopted.
  - j. That the orders made on 25/2/2026 are for the restoration of my goods illegally taken from the business premises by the appellant.
  - k. That the appeal having been filed in the inappropriate court stands no chance of succeeding.
  - l. That this honorable court has no jurisdiction to grant the orders sought.
  - m. That the appellant stands to suffer no harm if he restores the goods illegally taken from the premises to me.
  - n. That the illegal conduct of the appellant cannot be countenanced by the honorable court.
  - o. That the appellant ought to comply with the orders of the subordinate court by restoring the goods stolen from my premises to me.
  - p. That there is no tenant in the lease premises.



- q. That even if there was a tenant illegally installed on the lease premises to frustrate the court order the court is not powerless to restore the parties to position, they occupied prior to the illegal removal and break in to my premises.
- r. That the court cannot sanction the appellants illegal and unjust conduct to my detriment
- s. That he who seeks equity must be equitable in his conduct and dealings.
- t. That I swear this affidavit in opposition of the application dated 26/2/2026.

## Decision

- 5. This matter is about the ruling which originated from the decision of the Magistrate court dated 25<sup>th</sup> February 2026 in which the following orders were issued:
  - a. The Preliminary Objection dated 10<sup>th</sup> December 2025 is dismissed with costs.
  - b. The Notice of Motion dated 4<sup>th</sup> December 2025 is allowed.
  - c. The attachment and seizure of the Respondent's goods on 2<sup>nd</sup> December, 2025 is hereby declared illegal, null and void ab initio.
  - d. The Applicant (Huzefa Amirali) and Seventy-Seven Auctioneers are hereby ordered to restore and return all seized goods to the Respondent's business premises (Benom Enterprises Hardware) within forty-eight (48) hours of this ruling.
  - e. In default of restoration, the Respondent is at liberty to move this Court for committal proceedings against the Decree Holder and the Auctioneers for contempt.
  - f. The costs of this application are awarded to the Respondent.
- 6. In my appreciation of the record, on 1<sup>st</sup> day of July 2025 Hon. P. Kitur a member of Business Premises Tribunal pronounced himself as follows:
  - a. In light of this, Section 4(2) of the Act provides that: -

"A 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".
  - b. Further Section 4(4) of the 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."
  - c. Accordingly, the Landlord issued a notice under the prescribed form, specifying a termination date i.e. 1<sup>st</sup> August 2023 that complied with the statutory 2 months' minimum notice period, thereby rendering the notice procedurally valid and legally effective under the Act.
  - d. It follows, therefore, that Section 6 of the Act is applicable and provides as follows

"A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal..."



- e. It is trite that only a reference filed in proper form and within time can suspend the operation of a termination notice. The Tenant having failed to act within the statutory time frame, allowed the notice to take effect unchallenged subject to section 10 of the Act. Equity aids the vigilant, not the indolent. The Tenant slept on his rights and only woke up when the Landlord asserted his rights.
- f. In light of the foregoing, I hereby make the following final orders:
- i. The Complaint dated 19<sup>th</sup> March 2024 filed by the Tenant lacks merit and is hereby dismissed.
  - ii. The termination notice dated 24<sup>th</sup> May 2023 is valid and took effect on 1<sup>st</sup> August 2023.
  - iii. The Landlord is lawfully entitled to possession of the suit premises.
  - iv. The Landlord is entitled to mesne profits over the premises payable by/the Tenant for the period between August 2023 to January 2024, both months inclusive at the rate of Kshs. 35,000/= per month, totaling Kshs. 210,000/= payable no later than 30<sup>th</sup> August 2025 in default of which the Landlord shall be entitled to distress for that amount only together with any incidental costs without any further reference to this Tribunal.
  - v. Each party shall bear their own costs.
  - vi. File is marked as closed
7. From the two decisions emanating from the inferior courts, it is my view that they exercised their discretion at cross-purposes and by the conclusion of this ruling one of them may have to be pronounced as having acted in excess of jurisdiction. It is trite law that a court cannot exercise jurisdiction by judicial fiat; it must be conferred either by the applicable Constitution or arise from the legislative scheme within a statute. Jurisdiction is everything and constitutes the live wire upon which a court is able to issue orders or determine issues on their merits. The Supreme Court in *Samuel Kamau Macharia and Another v Kenya Commercial Bank Ltd & 2 Others* (2012) eKLR held that:
- “A court’s jurisdiction flows from either *the constitution* of legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by 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.”
8. Similarly, in *R Vs Karisa Chengo* [2017] eKLR the Supreme court in jurisdiction held itself out as follows:
- “That by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance 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 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 cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a Court takes upon itself to exercise a jurisdiction which it does not



possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

9. In Article 1(3) (c) delegates power to the Judiciary and independent tribunals. The Judiciary, comprising of courts and independent tribunals, is the main formal institution in Kenya that is charged with conflict management and the formal administration of justice. Article 169 (1) lists the local tribunals among the Magistrates courts, the Kadhis’ courts, the Courts Martial as subordinate courts in Kenya while Article 162. (1) lists the superior courts as the Supreme Court, the Court of Appeal, the High Court and the courts established under Article 162. (2) is namely the employment and labour relations, and the environment and the use and occupation of, and title to, land.
10. It is also the law in Kenya that Tribunals are quasi-judicial bodies anchored in law to adjudicate sector wide disputes and any party or litigant aggrieved from the decision of a tribunal can appeal it through a written memorandum to the High court or depending on the subject matter to the courts of equal status.
11. The issue of jurisdiction is an issue of law, however in this instance to arrive at a determination the court will inevitably have to consider the contracts binding the two parties. A preliminary objection is in the nature of what used to be called a demurrer. It is a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. See *Mukisa Biscuits Manufacturing Company Limited v West End Distributors Limited* [1969] EA 969 at 700E, 701B.
12. What the principles above demonstrates is the pre-eminence of jurisdiction in adjudication of cases by any Judge, Magistrate or Chairman of Tribunals and it is a sine qua non in all judicial proceedings such that an objection to jurisdiction can be traced at any time before, during and after the same court or even higher courts. Consequently, the courts themselves when they come to realization that any one of it has no personum or the res of the dispute, the law dictates that it down tools.
13. I have the advantage to appreciate the application on the mover as filed by learned counsel Njiru Kibaru and the subsequent objection raised by Mr. Momanyi in response to that application. This is my answer that jurisdiction remains to be the live wire, the bedrock and foundation of all judicial and quasi-judicial proceedings in all our level of courts and tribunals. *The constitution* both in its letter and spirit does donate the jurisdiction to each levels of court which is further broken down in appreciative elements by the enabling statutes specifically tailored for each particular court. As a matter of emphasis, I borrow the word of the court of appeal Judge Ndukwe Anyawu in the case of *GTB v Toyed (Nig) ltd & Anor* (2016) LPELR-4181 (CA) in which he restated the elementary law on jurisdiction as follows: -

The law is well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter and on which any court tries or hears a case. It is, metaphorically speaking, the life blood trials, whether it be at the court of trial or on appeal, and without which all such trials and hearings are a nullity notwithstanding how well or meticulous such a trial or proceeding had been conducted or how sound or profound the resultant judgment. It is simply a nullity.
14. In simple terms the jurisdiction on landlord tenant within the business rentable premises is in the first instance and primarily vested with the Business Premises Rent Tribunal and it is empowered to determine the contractual obligations on landlord tenant relationship in the manner prescribed by law. Therefore, the jurisdiction of court or Tribunal is a matter of law and cannot be consented be by the parties or the court cannot take upon itself to establish jurisdiction where there is none. Essentially the



validity, legality, justness, regularity, and the correctness of any decision emanating from any court or Tribunal is underpinned on jurisdiction.

15. What is the challenge of proceedings before this court in the Business Premises Rent Tribunal Case No. E044 of 2024? The judgment pronounced and given by Hon. P. Kitur on 1<sup>st</sup> day of July 2025 passes the test of personal, territorial and subject matter jurisdiction. It is the first forum conveniens over a subject matter or party within the scope of landlord and tenancy relationships concerning business premises. This jurisdiction is essentially not reserved for the Magistrates' Court, and therefore that court does not possess concurrent jurisdiction over matters relating to Business Premises Rent issues or disputes. The two adjudicatory forums do not have the same or similar powers over disputes between a landlord and a tenant. Therefore, from my perspective, for the Magistrates' Court to entertain an application and a motion dated 10<sup>th</sup> December 2025 and 14<sup>th</sup> December 2025, respectively, with regard to the execution and enforcement of the decree emanating from the Business Premises Rent Tribunal, was ultra vires the basic components of that court's jurisdiction.
16. The decision by the learned trial magistrate, dated 25<sup>th</sup> February 2026, was framed in such a manner that this court might leave it in limbo and operative pending the hearing of the intended appeal. However, the difficulty I have with it is that the learned trial magistrate did not possess the legal capacity, power, or authority of a court to adjudicate upon the particular subject matter in controversy. His decision went against the final orders of Hon. P. Kitur, a member of the Business Premises Rent Tribunal, issued on 1<sup>st</sup> July 2025. The judicial power to adjudicate on such matters, generally provided for under the framework of the Business Premises Rent Tribunal (BPRT), is reserved for the Tribunal, and any appeal arising from its decisions is vested in the Environment and Land Court. What the learned magistrate ought to have done was to acknowledge this clear position on jurisdiction and, if necessary, offer an advisory observation directing the parties to seek remedies before the proper forum.
17. As it is known in law that doctrine of jurisdiction of courts refers to the legal authority, power, and competence vested in court by *the constitution* or statute to hear, try, and determine a legal dispute. A court without jurisdiction cannot proceed with a case and any judgement rendered without it is considered null and void. The core principles which must be borne in my by a court on matters of jurisdiction include inter-alia
  - a. Fundamental Threshold: Jurisdiction is a threshold question that must be addressed at the inception of legal proceedings.
  - b. Cannot be Conferred by consent: Parties cannot consent to or waive jurisdiction if it does not exist an initio (from the beginning)
  - c. Statutory Basis: Jurisdiction is conferred only by eh constitution or statute not by the whim of the court
  - d. Inherent Power to Determine Jurisdiction: Every court has the inherent authority to determine its own jurisdiction, even if it requires looking into the substance of the matter
  - e. Presumption of Jurisdiction: Every presumption should be made in favour of a civil courts jurisdiction unless it is expressly or implied barred by a specific statute.
18. This dispute is rooted in the Landlord tenancy relationship arising out of a business premises. The primary forum to adjudicate the issues arising of that contractual relationship is what is commonly referred to as the Business Premises Rent Tribunal. A Tribunal is a quasi-Judicial body established by different Act of Parliament to handle Sect Specific Disputes. It is mandated to resolve disputes in a fast, simple and speedy manner and less formal alternatives to the regular courts. A decision from a Tribunal



can be appealed through a written memorandum within a specified time frame to the Environment and Land Court. I am of the legal view that there is no parallel concurrent jurisdiction with the Magistrate's Court.

19. From the above jurisprudential decision, it follows therefore that the impugned decision of the learned trial magistrate dated 25<sup>th</sup> day of February 2026 is null and void and it has got to be set aside by the application of *the constitution* and statute law on matters touching on want of jurisdiction. The costs of this application awarded to the applicant to this application. It is so ordered.
20. The law is well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter and on which any Court tries or hears a case. It is, metaphorically speaking, the life blood of all trials, whether it be at the Court of trial or on appeal, and without which all such trials and hearings are a nullity notwithstanding how well or meticulous such a trial or proceeding had been conducted or how sound or profound the resultant judgement.

It is simply a nullity

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 9<sup>TH</sup> DAY OF MARCH 2026**

.....

**R. NYAKUNDI**

**JUDGE**

