



Ecosee Mwananchi Limited & another v Chairperson, Business Premises Rent Tribunal, Nairobi & another (Environment and Land Judicial Review Case E021 of 2025) [2026] KEELC 1283 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KEELC 1283 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E021 OF 2025

TW MURIGI, J

FEBRUARY 27, 2026

IN THE MATTER OF AN APPLICATION BY ECOSEE MWANANCHI LIMITED AND GEORGE NYAMUNGA FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

IN THE MATTER OF THE DECISION OF THE BUSINESS PREMISES RENT TRIBUNAL (BPRT) IN CASE NO BPRT/E1175/2024

IN THE MATTER OF THE LAW REFORM ACT CHAPTER 26 OF THE LAWS OF KENYA SECTIONS 8 AND 9

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLE 47

BETWEEN

ECOSEE MWANANCHI LIMITED 1ST APPLICANT

GEORGE NYAMUNGA 2ND APPLICANT

AND

CHAIRPERSON, BUSINESS PREMISES RENT TRIBUNAL, NAIROBI 1ST RESPONDENT

MARY AMUKOYA MIRIKAU 2ND RESPONDENT



JUDGMENT

1. By a Notice of Motion dated 24th April 2025 brought under Order 53 Rules 3 and 4 of the Civil Procedure Rules, 2010, Sections 8 and 9 of the Law Reform Act, and Articles 47, 23(3) and 50 of the Constitution of Kenya, 2010, the Applicant seeks the following orders:
 - a. An order of Certiorari do issue to remove into this Honourable Court for purposes of being quashed, the entire proceedings and decision of the 1st Respondent issued on 26th day of March, 2025 in BPRT Case No. E1175 OF 2024, resolving the reference filed by the 2nd Respondent in her favour and awarding her the sum of Kshs. 600,000/= inclusive of costs.
 - b. An order of Prohibition do issue to restrain the 1st and 2nd Respondents, by themselves, their servants or agents, from implementing, enforcing, or in any way acting upon the said decision of the Tribunal.
 - c. That the costs of this application be borne by the 2nd Respondent.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of George Nyamunga, the director of the 1st Applicant, sworn on even date.

The Applicant's Case

3. The deponent averred that the 2nd Respondent was a tenant occupying the premises known as Shop No. 12, G's Arcade, on L.R. No. 209/9680/9, under the terms of a written lease agreement dated 1st October, 2019, for a period of five years and three months.
4. He further averred that the 1st Applicant refused to renew the lease agreement and issued a notice of non-renewal dated 18th September 2024, citing default in rent payment, unauthorized subletting, and the effluxion of time.
5. He explained that the 2nd Respondent filed a reference (BPRT/E1175/2024) with the Business Premises Rent Tribunal, seeking orders to restrain the 1st Applicant from evicting her or interfering with the leased premises.
6. The deponent averred that on 22nd January 2025, the 2nd Respondent filed a further application seeking the sum of Kshs. 610,020/= as compensation for improvements made to the suit premises. He explained that the 2nd Respondent confirmed in her application that the lease agreement was for a term of five years and three months, which exceeds the statutory period applicable to controlled tenancies.
7. He argued that the Tribunal lacked jurisdiction to hear the case because the tenancy was not a controlled tenancy as defined by Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 Laws of Kenya.
8. He asserted that, although he raised the issue of jurisdiction in his replying affidavit and written submissions, the Tribunal proceeded to hear the matter and, on 25th March 2025, delivered a decision awarding the 2nd Respondent Kshs. 600,000/=, as compensation, inclusive of costs.
9. According to the Applicants, the Tribunal's decision was illegal, null, and void because it was rendered without jurisdiction, and it should be quashed.



The 2nd Respondent's Case

10. The 2nd Respondent filed a Notice of Preliminary Objection dated 15th September 2025, arguing that this Court lacks jurisdiction to hear this Judicial Review proceeding as it was an appeal disguised as a judicial review. It was contended that the application seeks to re-open and re-hear the substantive merits of the Business Premises Rent Tribunal's decision delivered on 26th March 2025, rather than to impugn the decision-making process.
11. The 2nd Respondent contends that the application offends the Supreme Court decision in *Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] KESC 2 (KLR). To support this argument, Counsel relied on *Court Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] KECA.
12. The 2nd Respondent further contended that the application is incompetent insofar as the Applicant seeks to introduce and rely on new evidence that was not presented to the Tribunal, which would amount to allowing an appeal or rehearing on the merits under the guise of Judicial Review. To support this point, reliance was placed on *Republic v National Environmental Management Authority, ex parte Sound Equipment Ltd* (2011) eKLR. Based on the foregoing, the 2nd Respondent urged the Court to uphold the Preliminary Objection and dismiss the application with costs.
13. Alternatively, it was argued that any new evidence not included in the record before the Tribunal should be struck out.
14. The 2nd Respondent also filed a replying affidavit dated 15th September 2025 in opposition to the application. She argued that the application was fatally defective, incompetent, and misconceived as the Applicants were essentially challenging the merits of the decision delivered on 26th March 2025. She reiterated that Judicial Review is limited to reviewing the legality, rationality, and procedural propriety of the decision-making process, not the decision.
15. She argued that the Applicant's recourse was to file an appeal under Section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, rather than invoke this Court's supervisory jurisdiction.
16. She further averred that the Applicant had attached a document that was neither produced nor tendered before the Tribunal. She argued that the Tribunal considered the evidence and found that the document relied upon by the Applicant was not signed by both parties as required under Section 3(3) of the *Law of Contract Act*, and therefore had no legal effect. The Tribunal consequently determined that the tenancy fell within the definition of a controlled tenancy under Section 2(1) of Cap 301 Laws of Kenya.
17. The deponent argued that the Applicant's attempt to introduce the document in these proceedings is an impermissible effort to present new evidence and reopen factual issues already determined by the Tribunal. It was further argued that such an action is prejudicial, irregular, and inconsistent with the established principles of judicial review.
18. She maintained that the Tribunal acted within its jurisdiction under Section 12 of Cap 301, that the Applicant was afforded a full and fair hearing, and that no illegality, irrationality, procedural impropriety, or violation of Article 47 of *the Constitution* has been established.
19. In conclusion, she urged the Court to dismiss the application for being an abuse of the Court's process.



20. The Applicants filed grounds of opposition to the Preliminary Objection dated 7th October 2025. The Applicants argued that the preliminary objection does not raise any point of law as outlined in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors td (1969) E A 696*. They argued that the judicial Review application is not an appeal as it seeks to challenge the 1st Respondent's jurisdiction. They further contended that the objection misconstrues the nature and scope of judicial review outlined in Sections 8 and 9 of the [Law Reform Act](#), Order 53 of the Civil Procedure Rules, and Article 47 of [the Constitution](#).
21. Both the application and preliminary objection were canvassed by way of written submissions.

The Applicants' Submissions

22. The Applicant filed two sets of submissions.
23. The first set of submissions is dated 10th June 2025 in respect to the application dated 24th April 2025.
24. On behalf of the Applicant, Counsel outlined the following issues for the Court's determination:
 - a) Whether the tenancy in dispute was a controlled tenancy within the meaning of Section 2 of the Landlord and Tenant (Shop, Hotels and Catering Establishments) Act.
 - b) Whether the 1st Respondent acted ultra vires and without jurisdiction.
 - c) Whether the impugned decision violated the Applicant's right to fair administrative action under Article 47 of [the Constitution](#) and the [Fair Administrative Action Act](#) 2015.
 - d) Whether the Applicants are entitled to the reliefs sought.
25. Regarding the first issue, Counsel submitted that the gravamen of the Judicial Review application was the Business Premises Rent Tribunal's lack of jurisdiction in BPRT Case No. E1175 of 2024.
26. Counsel argued that the Tribunal lacked jurisdiction because the lease executed on 1st October, 2019, was for a fixed term of five years and three months, which falls outside the statutory definition of a controlled tenancy.
27. To support this argument, Counsel relied on *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR*, where the Supreme Court underscored that jurisdiction flows from [the Constitution](#) or legislation and cannot be assumed. Further reliance was placed on *Lucy Njeri Njoroge v Kaiyahe Njoroge [2015] eKLR*, where the Court of Appeal reaffirmed that the Tribunal's mandate does not extend beyond controlled tenancies.
28. Regarding the second issue, Counsel argued that any decision made without jurisdiction is ultra vires and void. Counsel relied on *Republic v Kenya Revenue Authority ex parte Yaya Towers Limited [2008] eKLR*, to argue that a decision made in excess of statutory power is amenable to being quashed by an order of Certiorari.
29. Regarding the third issue, Counsel submitted that the impugned decision violated Article 47 of [the Constitution](#) and Section 4(3) of the [Fair Administrative Action Act](#), 2015. To emphasize this point, reliance was placed on *Republic v Public Procurement Administrative Review Board & 2 Others ex parte Pesa Print Limited [2018] eKLR*, where the Court held that a breach of Article 47 of [the Constitution](#) is a proper ground for judicial intervention.
30. In conclusion, Counsel urged the Court to allow the application with costs to the Applicants.



31. Regarding the Preliminary Objection, the Applicants filed their submissions dated 28th October 2025. On behalf of the Applicants, Counsel outlined the following issues for the Court’s determination:
 - a) Whether the Preliminary Objection raises pure points of law.
 - b) Whether the judicial Review application is an appeal in disguise.
 - c) Whether the Honourable Court has jurisdiction to entertain a Judicial Review challenging the BPRT’s lack of jurisdiction.
32. Regarding the first issue, Counsel submitted that the preliminary objection does not raise a pure point of law as defined in *Mukisa Biscuit Manufacturers Co. Ltd v West End Distributors Ltd* [1969] EA 696, because it invites the Court to examine the nature of the application and factual matters, thereby falling outside the strict parameters of a preliminary objection.
33. Regarding the second issue, Counsel rejected the assertion that the present application is an appeal disguised as Judicial Review. It was submitted that the application challenges jurisdiction, not the merits of the Tribunal’s findings. Counsel cited *Republic v Chairman, Business Premises Rent Tribunal & Another ex parte Sheikh t/a Hussein Enterprises* [2016] eKLR, where the Court held that a Tribunal decision made outside the scope of a controlled tenancy is subject to quashing by Certiorari.
34. Regarding the third issue, Counsel relied on the dictum in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 to emphasize that jurisdiction is foundational and that without it a Tribunal has no power to proceed with a matter.
35. Regarding the allegation of introducing new evidence, Counsel argued that no new evidence was introduced because the lease agreement relied upon was part of the record before the Tribunal and was acknowledged by both parties.
36. In conclusion, Counsel urged the Court to allow the application and to dismiss the Preliminary Objection with costs.

2nd Respondent’s Submissions

37. The 2nd Respondent filed her submissions dated 10th October 2025.
38. On behalf of the 2nd Respondent, Counsel submitted that the issue for determination is whether the preliminary objection is sustainable in law. Counsel contended that the principles governing preliminary objections are well settled. To support this point, reliance was placed on *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors* (1969) EA 696, where it was held that a preliminary objection must raise a pure point of law and cannot be based on disputed facts or matters requiring the exercise of judicial discretion.
39. Further reliance was placed on *Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 Others* [2015] eKLR, where the Supreme Court reiterated that a preliminary objection lies only where there is no factual dispute. Counsel also relied on *Omondi v National Bank of Kenya Ltd & Others* [2001] KLR 579; [2001] 1 EA 177, to support the proposition that the Court may examine the pleadings and record to determine a preliminary objection without resorting to affidavit evidence.
40. Counsel submitted that the impugned Ruling extensively addressed the issue of jurisdiction and relied on Section 3(3) of the *Law of Contract Act*, as read together with Sections 2(1) and 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. Counsel further submitted that the Lease Agreement annexed to the Judicial Review application is not the same agreement that was placed before and considered by the Tribunal.



41. Counsel submitted that these circumstances demonstrate that the Applicants are trying to change the record and re-litigate the merits of the matter under the guise of Judicial Review.
42. Counsel further submitted that Judicial Review is confined to the decision-making process, not the merits of the decision. To support this point, Counsel relied on *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* (Civil Appeal No. 185 of 2001) [2002] KECA, where the Court of Appeal held that Judicial Review concerns the legality of the process and does not permit the Court to act as an appellate forum on the merits. Further reliance was placed on *Mwicigi & 14 Others v Independent Electoral and Boundaries Commission & 5 Others* (Petition No. 1 of 2015) [2016] KESC 2 (KLR), where the Supreme Court cautioned against transmuting disputes into Judicial Review proceedings when a specific statutory dispute-resolution mechanism exists.
43. Counsel submitted that Section 15(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* allows an aggrieved party to appeal to the Environment and Land Court within thirty days of the Tribunal's decision. Counsel relied on *Republic v National Environmental Management Authority ex parte Sound Equipment Ltd* [2011] eKLR, and *Commissioner of Lands v Kunste Hotel Limited* [1997] KECA 335 (KLR).
44. Counsel further submitted that the present application offends Order 53 Rule 7(1) of the Civil Procedure Rules, contending that the Applicants are challenging the validity of the Tribunal's ruling while simultaneously attempting to introduce new material that was not included in the original record.
45. Counsel argued that the Judicial Review Application is incompetent, an abuse of the Court process, and essentially a disguised appeal. In conclusion, Counsel urged the Court to uphold the Preliminary Objection and dismiss the application with costs to the 2nd Respondent.

Analysis And Determination

46. Having considered the application, the preliminary objection, the respective affidavits and submissions, the following issues arise for determination:
 - a. Whether this Court has jurisdiction to hear and determine this matter.
 - b. Whether the 1st Respondent had jurisdiction to determine BPRT Case No. E1175 of 2024.
47. Regarding the first issue, the 2nd Respondent argued that this Court lacks jurisdiction to hear this matter because it is an appeal disguised as a judicial review application. The law on preliminary objections is well established. A preliminary objection must be based on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd* (1969) EA 696, Law JA stated as follows:

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
48. Further on Sir Charles Newbold JA stated;

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary



objection is in the nature of what used to be a demurrer. It raises a point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

49. In *Oraro Vs Mbaja* (2005) eKLR Ojwang J (as he then was) described it as follows;

“I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

50. For a preliminary objection to be valid, it must be based on a point of law and on facts that are not in dispute. It should not be proved by facts or evidence, nor should it address disputed facts.

51. It is trite that jurisdiction is everything, and without it, a Court cannot proceed with the matter. In *Owners of the Motor Vessel Lilian S” vs. Caltex Oil (Kenya) Limited* [1989] KLR 1 Nyarangi JA stated:

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

52. Similarly, in *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others* (2012) eKLR as follows: -

“... 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 to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels 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 ... where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

53. The 2nd Respondent contends that this Court lacks jurisdiction, arguing that the Applicants should have filed an appeal instead of initiating judicial review proceedings.

54. When a party challenges a Tribunal’s jurisdiction, the challenge goes to the root of the proceedings’ legality, not merely to the correctness of the Tribunal’s findings.

55. The 2nd Respondent argued that the application is an appeal disguised as a judicial review, because the Applicants are challenging the merits of the decision, not the decision-making process. It was argued that the Applicants seek to reopen and rehear the BPRT’s decision delivered on 26th March 2025 on its merits, rather than challenging the decision-making process.



56. The record shows that the key issue is whether the Tribunal had jurisdiction to determine the dispute in the first place. That question does not invite this court to reevaluate the evidence or substitute its own findings on the merits. Rather, it calls on the court to determine whether the Tribunal acted within the law. Based on the foregoing, I find that this court has jurisdiction to hear and determine this matter.
57. Consequently, I find that the preliminary objection lacks merit and is hereby dismissed.
58. Regarding the second issue, the crux of the Applicant’s claim is that the 1st Respondent lacked jurisdiction to hear and determine BPRT Case No. E1175 of 2024. Accordingly, the Applicants have invoked this court’s supervisory jurisdiction and seek the judicial review remedies sought.
59. The duty of a Court in Judicial Review proceedings was set out in *Pastoli v Kabale District Local Government Council and Others* (2008) 2 E. A 300, where the court held that:
- “In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.’
60. The parameters of Judicial Review were reaffirmed by the Court of Appeal in *Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd C. A Civil Appeal No. 185 of 2001*, where it was held that:
- “Judicial Review is concerned with the decision making process, not with the merits of the decision itself; the Court would concern itself with such issues as to whether the decision maker had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters. The Court should not act as a Court of Appeal over the decider, which would involve going into the merits of the decision itself – such as whether there was or there was not sufficient evidence to support the decision.
61. The Applicants seek an order of Certiorari to quash the entire proceedings and the decision of the 1st Respondent issued on 26th March 2025. An order of Certiorari is issued to quash a decision made by a public authority where the decision is shown to be unlawful, irrational, or procedurally improper. The Applicants argued that the Tribunal lacked jurisdiction to entertain the reference because the tenancy in question was not a controlled tenancy under Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301.
62. A controlled tenancy is defined in Section 2 of Cap 301 as 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; or
 - iii. relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community, or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

63. It is not in dispute that the subject premises were a shop. The lease agreement was in writing and executed by both parties. Part 2.1 of the lease provided for a term of five years and three months. On its face, the term exceeded five years. There is no evidence before this court showing that the lease contained a termination clause, other than for breach, within five years, or that the premises fall within a category specified under the Act.
64. The 2nd Respondent argued that the Applicants have introduced new evidence to this Court that was not presented to the Tribunal. Specifically, it is claimed that the Lease Agreement attached to these proceedings differs from the one submitted and reviewed by the Tribunal. She asserted that the Tribunal found the document unsigned and therefore unenforceable under Section 3(3) of the *Law of Contract Act*.
65. It is noteworthy that neither party has presented the Tribunal's ruling to this Court, which is said to include a detailed analysis of the lease agreement in question. Similarly, no copy of the document considered by the Tribunal has been presented to this Court.
66. In the absence of the impugned ruling and the documentary material presented before the Tribunal, this Court cannot determine whether the agreement attached hereto differs significantly from the one considered by the Tribunal.
67. Consequently, the tenancy did not meet the statutory definition of a controlled tenancy.
68. In *Lucy Njeri Njoroge v Kaiyahe Njoroge* [2015] KECA 960 (KLR), the Court of Appeal held:
- “The Landlord and Tenant Act is unequivocal on the mandate of the Business Premises Tribunal, which is limited to controlled tenancies within the meaning of the Landlord and Tenant Act, and does not extend towards other contractual arrangements between parties.”
69. In *Nyaboke & another v Ondieki* (Environment and Land Appeal E011 of 2023) [2024] KEELC 5790 (KLR), the court held that if the Tribunal finds that no controlled tenancy exists, it must down its tools:
- “One of the powers that the Tribunal has under Section 12 (1) (a) of the Act is to determine whether or not any tenancy is a controlled tenancy, and I believe within that power, there is power to determine whether or not there is any tenancy at all. If the Tribunal finds that there is no tenancy, or no controlled tenancy, then it cannot make orders regarding rent or vacation of premises, for it will essentially have determined that the matter is beyond its jurisdiction. If it holds that there is no tenancy or no controlled tenancy, that should be the end of the reference. The parties, from the time of issuance of that order, now need to look for alternative remedies, for example, filing suit for eviction.



70. The existence of a controlled tenancy is not merely a matter of evidence; it is a jurisdictional requirement for the Tribunal's exercise of authority. Where the jurisdictional fact does not exist, any assumption of authority by the Tribunal constitutes an excess of jurisdiction. In such circumstances, the resulting decision is void and unenforceable.
71. In the present case, the lease agreement was for a fixed term of five years and three months and did not include any provision for termination other than for breach within five years. The term, therefore, exceeded the statutory threshold set out under Section 2 of Cap 301. The tenancy did not qualify as a controlled tenancy.
72. By entertaining the reference and awarding compensation in respect of a tenancy that fell outside the statutory definition of a controlled tenancy, the Tribunal acted beyond the jurisdiction conferred upon it by Cap 301 Laws of Kenya.
73. The Applicants seek an order of Prohibition to restrain the Respondents from implementing the decision. An order of Prohibition is issued to stop a public body from continuing or undertaking an unlawful act. Having found that the tenancy fell outside the ambit of Section 2 of Cap 301, the Tribunal's proceedings were ultra vires, null and void, and amenable to quashing under the Court's supervisory jurisdiction. Similarly, I find that the Respondents should be prohibited from implementing the decision.
74. The upshot of the foregoing is that I find that the application dated 24th April 2025 is merited and is allowed on the following terms:
- a. An order of Certiorari does hereby issue to remove into this Honourable Court for purposes of being quashed, the entire proceedings and decision of the 1st Respondent issued on 26th day of March, 2025 in BPRT Case No. E1175 OF 2024, resolving the reference filed by the 2nd Respondent in her favour and awarding her the sum of Kshs. 600,000/=inclusive of costs.
 - b. An order of Prohibition does hereby issue to restrain the 1st and 2nd Respondents, by themselves, their servants or agents, from implementing, enforcing or in any way acting upon the said decision of the Tribunal.
 - c. Costs of this application shall be borne by the 2nd Respondent.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF FEBRUARY 2026.

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HON. T. MURIGI

JUDGE

IN THE PRESENCE OF

Ms Kimeto for the Applicant

Ndungo for the 2nd Respondent.

