



**Imanyara t/a Gitobu Imanyara & Co Advocates v Value Zone Limited & another (Constitutional Petition E127 of 2024) [2026] KEHC 1310 (KLR) (Civ) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1310 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CONSTITUTIONAL PETITION E127 OF 2024**

**B MWAMUYE, J**

**JANUARY 22, 2026**

**IN THE MATTER OF: ARTICLES 2(1)(4),3(1), 20 (1), (2), (3) & (4), 19, 20(1), (2), ,22 (1)(2), 23(1)(3), 27(1) (2), 28, 31, 36, 40(1) (2(A), 47, 48, 50 (1), 159,165(3),258 & 259 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 2(4),20(1)(2),27(1) (2),28, 31, 36, AND 47 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 4(2) AND 12 (1) (H) OF THE LANDLORD AND TENANT (SHOPS, HOTELS AND CATERING ESTABLISHMENTS) ACT AND  
IN THE MATTER OF THE SECTION 3 AND 16(D) OF THE DISTRESS FOR RENT ACT**

**AND**

**IN THE MATTER OF THE ADVOCATES ACT.**

**BETWEEN**

**GITOBU IMANYARA T/A GITOBU IMANYARA & CO  
ADVOCATES ..... PETITIONER**

**AND**

**VALUE ZONE LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**VIEWLINE AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**



## JUDGMENT

### Introductory Background

1. This Petition dated 11<sup>th</sup> March, 2024 is brought pursuant to Articles 22, 23, 165(3)(b), and 258 of *the Constitution* of Kenya, 2010. The Petitioner, an advocate of the High Court of Kenya and the sole proprietor of the firm of Gitobu Imanyara & Co. Advocates, invokes the constitutional jurisdiction of this Court alleging actual and threatened violations of his fundamental rights and freedoms arising from the Respondents' conduct within the context of a controlled tenancy. The dispute emanates from the Respondents' purported levy of distress for rent against the Petitioner's law offices situate at Fatima Court, Nairobi, allegedly undertaken in disregard of statutory safeguards and constitutional guarantees.
2. The Respondents' case is that the Petition lacks merit both in law and fact. They contend that the Petitioner was in admitted rent arrears, which lawfully entitled the 1<sup>st</sup> Respondent, as landlord, to levy distress for rent pursuant to Section 3(1) of the *Distress for Rent Act*. This they maintain was carried out through a duly licensed auctioneer, strictly in accordance with the statute, and did not violate any constitutional or statutory provision. The Respondents further asserted that Section 3(1) of the *Distress for Rent Act* is constitutional, serves a legitimate and rational legislative purpose, and operates independently of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
3. The Petitioner seeks the following reliefs;
  - i. A Declaration be an is hereby issued that Section 3(1) of the *Distress for Rent Act* on purely procedural and substantive defects failed to capture the letter and spirit to the of *the Constitution* under Article 259 and is accordingly unconstitutional, null and void.
  - ii. A Declaration be an is hereby issued that Section 3(1) of the *Distress for Rent Act* on granting a landlord such absolute rights to levy distress for rent without such notice is unfair and discriminatory and therefore offends Article 27(1) (2) of *the Constitution* and accordingly the same be declared unconstitutional, null and void.
  - iii. A declaration that in line with Article 2(1)(4),20(1)(2), 27(1)(2),31 and 259 of *the Constitution* of Kenya read together with Section 4(2) and 12(1)(h) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, the pre-requisite notice must be issued and Leave of Business Premises and Rent Tribunal/court to distrain must be obtained before the right to distrain can be exercised in a controlled tenancy.
  - iv. A declaration be and is hereby issued that the distress for rent levied on the Petitioner on 7<sup>th</sup> December, 2023 as per the proclamation notice of even date contravenes and is/was inconsistent with Article 31 (b) of *the Constitution* of Kenya as read together with Section 16 (d) of the *Distress for Rent Act*.
  - v. A declaration be and is hereby issued that the acts/omissions by the 1<sup>st</sup> Respondent in their letter dated 29<sup>th</sup> March, 2023 contravened the petitioner's rights to freedom of association under Article 36(1) of *the Constitution* of Kenya.
  - vi. A declaration be and is hereby that the distress for rent levied against the Petitioner by the Respondents vide the proclamation of attachment notice dated 7<sup>th</sup> December, 2023 is/was



contrary to Section 4(2) and 12(1)(h) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*; hence null and void ab initio.

- vii. A declaration be and hereby issued that the actions of the 1<sup>st</sup> Respondent in the letter dated 7<sup>th</sup> December, 2023, giving instructions to the 2<sup>nd</sup> Respondent to distrain the Petitioner's property without notice was unfair, unlawful and illegal and against the Petitioner's rights to administrative action that is reasonable and procedurally fair as enshrined under Article 47(1) of *the Constitution*.
- viii. A declaration be and hereby issued that the malicious and punitive actions by the 1<sup>st</sup> Respondent as pleaded by the Petitioner in purporting to distrain the Petitioner's property after the Petitioner voiced his rightful complaints about the neglected premises and that further, the 1<sup>st</sup> Respondent's unwillingness to provide a better and stately environment for the rented space is unlawful and against the Petitioner's right to dignity as provided under Article 28 of *the Constitution*.
- ix. An award of General Damages for violation of the Petitioners' constitutional rights and fundamental freedoms as particularized in this Petition.
- x. Costs of the Petition.
- xi. That this Honourable Court be pleased to make any further orders as it may deem just and fit to grant.

#### **The Petitioner's case**

4. The Petitioner's case, as pleaded and supported by affidavit evidence, is that he has occupied the suit premises for over two decades as a tenant of the 1<sup>st</sup> Respondent under a controlled tenancy governed by the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301. He avers that he has substantially complied with his rental obligations over the years, save for occasional delays which were neither persistent nor deliberate and were historically resolved upon engagement with the landlord.
5. It is the Petitioner's contention that in September and December 2023, the 1<sup>st</sup> Respondent, acting through the 2<sup>nd</sup> Respondent auctioneer, purported to levy distress for rent in the sums of Kshs. 200,000/= and Kshs. 300,000/= respectively, without issuing the mandatory statutory notice under Section 4(2) of Cap 301 and without obtaining the requisite leave of the Business Premises Rent Tribunal as contemplated under Section 12(1)(h) thereof. The Petitioner contends that the purported distress amounted to an unlawful alteration of the terms of a controlled tenancy to his detriment and was therefore null and void ab initio.
6. The Petitioner further avers that the impugned distress was malicious, punitive, and actuated in bad faith, and was intended to intimidate and silence him following his lawful exercise of the freedom of association under Article 36 of *the Constitution*. In particular, he asserts that he had mobilised fellow tenants to collectively raise concerns regarding the dilapidated and hazardous condition of the premises, including issues of disrepair, pest infestation, and neglect of common areas. Instead of addressing these grievances, the 1<sup>st</sup> Respondent allegedly resorted to coercive measures calculated to undermine the Petitioner's dignity and professional standing.
7. Central to the Petition is the assertion that the Respondents unlawfully entered the Petitioner's law offices and proclaimed tools of trade, office equipment, and items held in trust for clients. The Petitioner contends that this conduct contravened Section 16 of the *Distress for Rent Act*, the *Advocates*



*Act*, the *Evidence Act*, and settled principles of advocate-client confidentiality, thereby violating his right to privacy under Article 31 of *the Constitution* and exposing privileged client information to impermissible risk.

8. The Petitioner also mounts a constitutional challenge to Section 3(1) of the *Distress for Rent Act*, contending that it confers an absolute and unfettered power upon landlords to levy distress without notice, safeguards, or proportionality. He argues that the provision is inconsistent with Articles 2(4), 20, 27, 31, and 259 of *the Constitution*, and that it is rooted in archaic common law principles incompatible with the contemporary constitutional order founded on human dignity, equality, social justice, and the rule of law. In his view, the provision must yield to the supremacy of *the Constitution* and the protective statutory regime governing controlled tenancies under Cap 301.
9. In his written submissions dated 9<sup>th</sup> December 2024, the Petitioner maintained that the Petition is properly before the Court under Articles 22, 23(3), and 258 of *the Constitution*. He urged the Court to exercise its constitutional mandate in a manner that promotes the purposes, values, and principles of *the Constitution* as required by Articles 159(2)(e) and 259, relying on *Institute of Social Accountability & Another v National Assembly & 4 Others* for the proposition that courts bear a positive duty to safeguard constitutional supremacy and the rule of law.
10. The Petitioner reiterated that the levy of distress within a controlled tenancy is not a self-executing right but is subject to statutory notice, tribunal oversight, and proportionality. He submitted that Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* mandatorily requires notice before any alteration of a controlled tenancy to the detriment of a tenant, and that Section 12(1)(h) thereof vests the power to permit distress in the Tribunal. In this regard, it was argued that Section 3(1) of the *Distress for Rent Act* cannot operate independently of, or in derogation from, the primary statute governing controlled tenancies, nor in a manner inconsistent with *the Constitution*, having regard to Articles 2(4), 20, and 259.
11. On constitutional violations, the Petitioner submitted that the Respondents' acts and omissions infringed his rights under Articles 2, 22, 27, 36(1), and 47 of *the Constitution*. He contended that these violations were pleaded with the precision required by *Anarita Karimi Njeru v Attorney General* [1979] KLR, and that the Respondents' conduct amounted to discrimination, denial of equal protection of the law, unjustified interference with freedom of association, and unfair administrative action.
12. As regards remedies, the Petitioner relied on Article 23(3) of *the Constitution*, submitting that the Court is empowered to grant declaratory reliefs, declarations of invalidity, and compensation. He contended that he is entitled to general damages for violation of his constitutional rights, particularly in light of the fact that the Petition was unopposed, the Respondents having failed to file any response within the timelines prescribed under Rule 15(2)(b) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules). He further submitted that costs ought to follow the event.
13. The Petitioner urged the Court to adopt a broad, liberal, and purposive interpretation of *the Constitution* in accordance with Article 259, and relied on *Coalition for Reform and Democracy (CORD) & 2 Others v Republic of Kenya & 10 Others* [2015] eKLR for the proposition that *the Constitution* reflects the national soul and that its spirit must permeate judicial interpretation. On that basis, he prayed that the Petition be allowed in its entirety.



## The Respondents' case

14. The Court notes that although the Respondents did not file any replying affidavits or formal responses to the Petition, they nonetheless filed written submissions dated 8<sup>th</sup> April 2025.
15. The Respondents submitted that the Petition dated 11<sup>th</sup> March 2024 challenges the constitutionality of Section 3(1) of the *Distress for Rent Act* and alleges violations of the Petitioner's constitutional rights, but is devoid of merit both in law and fact. They contended that the Petitioner, a tenant of the 1<sup>st</sup> Respondent occupying Fatima Court, Suite No. 14B & C, had admittedly fallen into rent arrears, thereby lawfully triggering the landlord's statutory right to levy distress.
16. According to the Respondents, the levy of distress for rent in the sums of Kshs. 200,000/= in September 2023 and Kshs. 300,000/= thereafter was undertaken strictly in accordance with the *Distress for Rent Act*, through a duly licensed auctioneer, and did not offend any statutory or constitutional provision.
17. On the question of constitutionality, the Respondents argued that Section 3(1) of the *Distress for Rent Act* is not unconstitutional. They submitted that the *Distress for Rent Act* and the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* operate within distinct legal spheres and serve different legislative purposes. While the former provides landlords with an enforcement mechanism for the recovery of rent arrears, the latter establishes a regulatory framework governing controlled tenancies, including protection against arbitrary eviction and rent increases.
18. In support of the applicable principles for constitutional interpretation, the Respondents relied on *Institute of Social Accountability & another v National Assembly & 4 others* [2015] eKLR, wherein the Court held that the constitutionality of a statute must be assessed by examining both its purpose and effect. They further cited *R v Big M Drug Mart Ltd* [1985] 1 SCR 295 for the principle that either an unconstitutional purpose or effect is sufficient to invalidate legislation.
19. The Respondents submitted that the legislative intent behind Section 3(1) of the *Distress for Rent Act* is clear and legitimate namely, to provide landlords with a lawful and efficient remedy for the recovery of rent arrears without resorting to eviction proceedings. They emphasised that the *Distress for Rent Act* predates the Landlord and Tenant Act, having commenced in 1938, and that Parliament, despite subsequent amendments to both statutes, did not repeal, amend, or subordinate Section 3(1) to Section 12 of the Landlord and Tenant Act. In their view, this legislative choice demonstrates an intention that the two statutes operate independently.
20. Relying on *Law Society of Kenya v Attorney General & another*, Sup Ct. Petition No. 4 of 2019; [2019] eKLR, and *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* (cited therein), the Respondents urged the Court to adopt a purposive interpretation that gives effect to the intention of Parliament. They argued that Section 12(1)(h) of the Landlord and Tenant Act merely empowers the Tribunal to make orders relating to tenancy terms and rent recovery, but does not require landlords to obtain leave of the Tribunal before levying distress for rent.
21. In this regard, the Respondents relied heavily on *John Nthumbi Kamwithi v Asha Abumu Juma* [2018] eKLR, where the Court held that a landlord does not require the permission of the Business Premises Rent Tribunal to levy distress for rent, even within a controlled tenancy, and that distress is a statutory right exercisable upon proof of rent arrears.
22. On the issue of notice, the Respondents submitted that the *Distress for Rent Act* does not require prior notice before distress is levied. They cited *Patricia Jean Louis v New Maintenance Services (K) Limited*



- [2019] KEHC 320 (KLR), where the Court held that notice is only required after distress has been levied, to afford the tenant an opportunity to pay the arrears within fourteen days. Accordingly, they argued that the absence of prior notice did not render the distress unlawful.
23. Turning to the alleged constitutional violations, the Respondents contended that the Petitioner failed to discharge the burden of proof. On Article 22, they argued that the Petitioner had not demonstrated any hindrance to accessing the Court, noting that the very existence of the Petition negated such a claim. On Article 27, they relied on *Gichuru v Package Insurance Brokers Ltd* (Petition 36 of 2019) [2021] KESC 12 (KLR) to submit that discrimination requires proof of differential treatment based on a protected characteristic, which the Petitioner had failed to establish.
  24. With respect to Article 36(1), the Respondents submitted that while *the Constitution* protects freedom of association, it does not sanction collective action in breach of lawful tenancy arrangements. They argued that the 1<sup>st</sup> Respondent's caution to the Petitioner regarding collective tenant engagement did not amount to an infringement of the right to associate.
  25. On Article 47, the Respondents maintained that the levy of distress was undertaken pursuant to a lawful statutory procedure and could not be characterised as unfair or arbitrary administrative action. They submitted that the Petitioner's allegations were speculative and unsupported by evidence.
  26. In support of the evidentiary burden in constitutional litigation, the Respondents relied on *Kamau & another (Suing on their own behalf and on behalf of 80 University of Nairobi Law School Students) v The University of Nairobi & 2 others and Attorney General & another (Interested Parties)* [2020] 7 KEHC 9221 (KLR), where the Court dismissed a petition for failure to prove alleged constitutional violations.
  27. On remedies, the Respondents submitted that in the absence of proof of infringement, the Petitioner was not entitled to damages. They relied on *Abdiwahab Ibrahim Ali & another v Inspector General of the National Police Service & 3 others* [2017] eKLR, where the Court held that compensatory damages can only be awarded upon proof of a constitutional violation.
  28. The Respondents urged the Court to find that Section 3(1) of the *Distress for Rent Act* is constitutional, that the levy of distress was lawful, and that the Petitioner had failed to establish any violation of his constitutional rights. They accordingly prayed that the Petition be dismissed with costs.

### **Analysis and Determination**

29. Having carefully considered the pleadings, the affidavit evidence, the rival written submissions, and the applicable constitutional and statutory framework, the Court identifies the following issues for determination:
  - i) Whether Section 3(1) of the *Distress for Rent Act* is unconstitutional.
  - ii) Whether the Petitioner's constitutional rights have been violated.
  - iii) Whether the Petition was filed in the appropriate forum and whether the doctrine of exhaustion of remedies applies.

### **Whether Section 3(1) of the *Distress for Rent Act* is Unconstitutional**

30. The Petitioner mounts a frontal constitutional challenge to Section 3(1) of the *Distress for Rent Act*, contending that it confers an unfettered and disproportionate power upon landlords to levy distress without notice, oversight, or safeguards, and is therefore inconsistent with *the Constitution* of Kenya, 2010. The Respondents, on the other hand, maintain that the impugned provision is constitutionally



sound, purposive, and operates independently of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301.

31. The principles governing constitutional review of legislation, and in particular the constitutionality of Section 3(1) of the *Distress for Rent Act*, are well established. Indeed, this issue has been consistently considered in prior decisions, including *John Nthumbi Kamwithi v Asha Abumu Juma* [2018] eKLR, and is, for all practical purposes, *res judicata*. As observed in *Institute of Social Accountability & another v National Assembly & 4 others* [2015] eKLR:

“In determining whether a statute is constitutional, the court must determine the object and purpose of the impugned statute... In examining whether a particular statutory provision is unconstitutional, the court must have regard not only to its purpose but also its effect.”

32. This purposive and effects-based approach was further affirmed by the Supreme Court in *Law Society of Kenya v Attorney General & another*, Sup Ct Petition No. 4 of 2019; [2019] Eklr.

33. Section 3(1) of the *Distress for Rent Act* expressly preserves the common law remedy of distress, subject only to the provisions of the Act itself and “any other written law.” Its legislative purpose is to provide landlords with a swift and effective mechanism for recovery of rent arrears without resorting to eviction proceedings. This objective, on its face, is legitimate and rational.

34. The Petitioner’s argument that Section 3(1) must be read as subordinate to Section 12(1)(h) of Cap 301 does not find support in statutory text or precedent. As correctly submitted by the Respondents, the two statutes operate in distinct legal domains. The *Distress for Rent Act* as an enforcement mechanism, and Cap 301 as a regulatory framework for controlled tenancies. Parliament’s decision not to repeal, amend, or harmonize Section 3(1) with Section 12(1)(h) indicates that the statutes are intended to operate concurrently, not hierarchically.

35. This position was judicially affirmed in *John Nthumbi supra* where the Court held:

“I find that the appellant had no obligation to seek permission from the tribunal to levy distress. The fact that the tenancy is controlled does not mean that the landlord applies to the tribunal to levy distress. Distress is a right the landlord is entitled to for recovery of rent.”

36. On the issue of notice, the Court in *Patricia Jean Louis v New Maintenance Services (K) Limited* [2019] KEHC 320 (KLR) held:

“Section 3 as read with Section 4 of the *Distress for Rent Act* does not require a landlord to issue notice before levying distress. The notice contemplated is issued after distress has been levied.”

37. In light of the foregoing, Section 3(1) of the *Distress for Rent Act* neither has an unconstitutional purpose nor produces an unconstitutional effect. It does not oust constitutional safeguards, nor does it negate judicial oversight where abuse is alleged. Accordingly, the impugned provision cannot be said to offend Articles 2(4), 20, or 259 of *the Constitution*.

### **Whether the Petitioner’s Constitutional Rights Were Violated**

38. The Petitioner alleges violations of Articles 22, 27, 31, 36(1), and 47 of *the Constitution* arising from the levy of distress. The burden of proof in constitutional litigation lies on the Petitioner to demonstrate, with precision and evidence, both the alleged violation and the manner in which it occurred.



39. In oft-cited *Anarita Karimi Njeru v Attorney General* [1979] KLR, the Court held:
- “If a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important... that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
40. On Article 22, the Petitioner did not demonstrate any impediment to accessing the Court. The very prosecution of this Petition negates such a claim.
41. On Article 27 (equality and non-discrimination), the Supreme Court in *Gichuru v Package Insurance Brokers Ltd* (Petition 36 of 2019) [2021] KESC 12 (KLR) held:
- “Discrimination arises where a person is treated differently from others in similar circumstances on the basis of a prohibited ground.”
42. The Petitioner did not allege, let alone prove, differential treatment based on a protected characteristic. The complaint regarding lack of notice does not, without more, amount to discrimination.
43. Regarding Article 36(1), while freedom of association is protected, it does not immunize individuals from lawful consequences of contractual or statutory obligations. The Respondents’ caution did not restrict the Petitioner’s right to associate but merely regulated tenancy engagement.
44. On Article 31 (privacy), the Petitioner did not demonstrate that confidential client information was accessed, examined, or misused. Mere apprehension, without evidence, is insufficient to establish a violation.
45. As to Article 47 (fair administrative action), the levy of distress was undertaken pursuant to a clear statutory framework. In *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR, the Court held:
- “Article 47 does not apply to lawful decisions made pursuant to statutory authority unless arbitrariness, bad faith, or procedural impropriety is demonstrated.”
46. No arbitrariness or illegality was proved.
47. This Court is guided by *Kamau & another v University of Nairobi & 2 others* [2020] 7 KEHC 9221 (KLR), where it was held:
- “A constitutional petition cannot succeed on the basis of speculation, conjecture or unproven allegations.”
48. Accordingly, the Petitioner has failed to discharge the evidentiary burden required to establish a violation of any constitutional right.

#### **Whether the Petition Was Filed in the Appropriate Forum and the Applicability of the Doctrine of Exhaustion of Remedies**

49. The Court has considered the pleadings, the applicable statutory framework, and the governing jurisprudence. The factual matrix of this Petition revolves around the issuance and validity of a statutory notice under Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering*



Establishments) Act, Cap 301 Laws of Kenya. The dispute, in its true character, arises from a controlled tenancy as defined under the Act.

50. Section 4(2) of Cap 301 is couched in mandatory terms and 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 tenancy, shall give notice in that behalf to the tenant in the prescribed form.”
51. The statute further provides that such notice shall not take effect until the lapse of not less than two months from the date of receipt by the tenant.
52. Disputes arising from such notices are expressly placed within the jurisdiction of the Business Premises Rent Tribunal by Section 12(1)(h) of the Act, which empowers the Tribunal:
- “ to investigate any complaint relating to a controlled tenancy and to make such order thereon as it deems just.”
53. This statutory design is neither incidental nor optional. Parliament deliberately established the Tribunal as a specialized forum with original and primary jurisdiction over controlled tenancy disputes, including challenges to the legality, propriety, and consequences of notices issued under Section 4(2).
54. It follows, as a matter of law, that where a party is aggrieved by the conduct of a landlord in relation to a controlled tenancy, recourse must in the first instance be had to the Business Premises Rent Tribunal. The Tribunal is vested with adequate remedial authority to interrogate the dispute and grant appropriate relief within the four corners of the Act.
55. In the present case, the Petitioner bypassed the Tribunal altogether and invoked the jurisdiction of this Court at the first instance. No explanation was offered for this departure, nor were any exceptional circumstances pleaded or demonstrated to warrant deviation from the statutory dispute resolution mechanism.
56. The principle that litigants must strictly adhere to dispute resolution procedures prescribed by statute is long settled. In *Speaker of the National Assembly v Karume* [1992] KLR 21, the Court of Appeal stated in unequivocal terms:
- “ Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”
57. That position has been consistently reaffirmed. In *Republic v Nairobi County Land and Environment Tribunal Ex Parte John Mwangi Njenga* [2018] eKLR, the Court held that where a dispute falls within the remit of a specialized tribunal, a party who bypasses that forum renders the proceedings incompetent.
58. The doctrine of exhaustion of remedies, now firmly entrenched in our jurisprudence, obliges parties to exhaust available statutory and administrative remedies before invoking the jurisdiction of superior courts. The Supreme Court in *Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others* [2015] eKLR emphasized that courts must respect alternative dispute resolution mechanisms established by law.
59. In the specific context of landlord and tenant disputes governed by the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301, the High Court in *Kenya Wine Agencies Ltd v*



Joseph Mwangi [2014] eKLR held that failure to exhaust remedies under the Act, absent proof that such remedies are inadequate or ineffective, is fatal to a claim.

60. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 further provides a clear and self-contained appellate framework. Section 15(1), as amended by Act No. 25 of 2015, permits an aggrieved party to appeal a determination of the Tribunal to the Environment and Land Court within thirty days. Parliament then imposed finality through Section 15(4), which provides that the decision of the Environment and Land Court on such appeal shall be final and not subject to further appeal.
61. This hierarchical framework evinces a deliberate legislative intent that disputes relating to controlled tenancies be conclusively resolved within specialized fora. Courts have consistently declined to countenance attempts to circumvent this structure. In *Kasturi Limited v Nyeri Wholesalers Limited* [2014] eKLR, it was affirmed that the Tribunal has exclusive original jurisdiction over controlled tenancy disputes. In *Modern Holdings (EA) Limited v Kenya Ports Authority* [2017] eKLR, the Court reiterated that jurisdictional boundaries established by statute must be respected.
62. The distinction between original and appellate jurisdiction was succinctly articulated by the Court of Appeal in *Kibos Sugar & Allied Industries Ltd v Benson Ambuti Atega & 6 Others* [2020] eKLR, where the Court held:

“...an original jurisdiction is not an appellate jurisdiction. A court with original jurisdiction in some matters and appellate jurisdiction in others cannot, by virtue of its appellate jurisdiction, usurp the original jurisdiction of other competent organs.”
63. Applying that reasoning to the present matter, it is clear that Parliament vested original jurisdiction over disputes arising under Sections 4(2) and 12(1)(h) of Cap 301 in the Business Premises Rent Tribunal, with appellate jurisdiction lying exclusively before the Environment and Land Court. To entertain such disputes within the Constitutional and Human Rights Division would amount to an impermissible usurpation of both the Tribunal’s original mandate and the Environment and Land Court’s appellate authority.
64. Constitutional jurisdiction cannot be deployed as a collateral device to bypass or defeat a comprehensive statutory dispute resolution mechanism, absent the demonstration of a pure constitutional question wholly detached from the tenancy dispute itself. No such question arises in the present Petition.
65. In the result, the Court is satisfied that the issues raised fall squarely within the jurisdiction of the Business Premises Rent Tribunal. The Petitioner’s failure to invoke that jurisdiction, and the premature resort to this Court, constitutes a clear violation of the doctrine of exhaustion and offends the principle of institutional competence.
66. The defect is not a mere procedural lapse but goes to the very jurisdiction of the Court. Consequently, even assuming without deciding that the constitutional questions raised were otherwise arguable, this Court is bereft of jurisdiction to entertain the Petition.
67. Accordingly, the Court finds that the Petition was filed in the wrong forum, in disregard of the mandatory statutory process under Cap 301, and is therefore premature, incompetent, and liable to dismissal.



### Whether the Petitioner Is Entitled to Damages

68. Having found that no constitutional violation has been established, the question of damages does not arise. Damages are awarded only upon proof of infringement. In *Abdiwahab Ibrahim Ali & another v Inspector General of the National Police Service & 3 others* [2017] eKLR, the Court held:

“It is only if infringement has been shown that the court can exercise its discretion whether or not to award compensatory damages.”

69. Similarly, under Article 23(3) of *the Constitution*, reliefs are granted only where a violation has been demonstrated. In the absence of proof, an award of damages would be legally unsustainable.

### Disposition

70. In view of the foregoing analysis and findings, the Court makes the following determinations:

- a) The challenge to the constitutionality of Section 3(1) of the *Distress for Rent Act* is without merit. The impugned provision neither offends *the Constitution* nor produces an unconstitutional purpose or effect.
- b) The Petitioner has failed to establish, to the requisite constitutional threshold, any violation or threatened violation of the rights guaranteed under Articles 22, 27, 31, 36(1), and 47 of *the Constitution*.
- c) The dispute giving rise to this Petition falls squarely within the jurisdiction of the Business Premises Rent Tribunal under Sections 4(2) and 12(1)(h) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301. The Petitioner’s failure to exhaust the statutory dispute resolution mechanism renders the Petition premature and incompetent.
- d) This Court consequently lacks jurisdiction to entertain the Petition, the same having been instituted in disregard of the mandatory statutory framework and in violation of the doctrine of exhaustion of remedies.
- e) In the absence of proof of any constitutional infringement, the claim for damages is untenable and is hereby declined.

71. In the result, the Petition is without merit and is dismissed in its entirety.

72. On the question of costs, and bearing in mind the nature of the dispute and the circumstances of the case, costs shall follow the event and are awarded to the Respondents.

73. Final Orders

- i. The Petition dated 11 March, 2024 is dismissed in its entirety.
- ii. The Respondents are entitled to costs of the Petition as against the Petitioner.

Orders accordingly. File closed accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

.....

**BAHATI MWAMUYEMBS**

**JUDGE**



In the presence of: -

Counsel for the Petitioner – Mr. Otieno

Counsel for the Respondents – Mr. Mbaabu

Court Assistant – Ms. Lwambia

