

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION

CIVIL SUIT NO. E261OF 2024

PARETTO PRINTING WORKS LTD.....
.....PLAINTIFF

VERSUS

LATER PRINTERS (K) LIMITED.....
.....DEFENDANT

RULING

1. By a Plaint **dated 19/11/2024** the Plaintiff sued the Defendant seeking as against the Defendant payment of Kshs. 921,197,500 being rent arrears in respect of premises on property known as LR. 209/10236 along Mombasa Road Nairobi by a tenancy agreement for initial five (5) years effective from 1/01/2016 to 31/03/2021, but which vide several other agreements was extended.
2. The Defendant's rental agreement expired on 31/03/2021 at which time, it is alleged the Defendant had an outstanding sum of Kshs. 60,000,000/= unpaid.
3. By further rental agreements the Defendants occupation of the premises was extended from 1/04/2021 to 30/06/2026 on 19/05/2025 and rent payable for the period also agreed (par. 9 of the plaint) that once more was not paid.

4. In August 2024, the plaintiff terminated the tenancy agreement and the Defendant vacated the rental premises in September 2024.
5. At par. 11 of the Plaint the Plaintiff states its claim against the Defendant is of damages for breach of contract to pay rent and to pay the balance of printing machines sold to the plaintiff and other services and contingencies and the particulars of breach of contract stated therein at par. 11 of the plaint.
6. In its statement of defence and counterclaim dated 14/01/2025, the Defendant admitted that the dispute relate to tenancy agreement but noted that it is not within the jurisdiction of this court, upon which it stated it would raise a preliminary objection that this court lacks jurisdiction to hear and determine the contractual dispute for the sale of the machines.
7. The defendant also filed a counterclaim alleging that the plaintiff failed to give him possession of the machines that he paid for Kshs. 66 million and tabulates the particulars of the breach.
8. The defendant therefore prays that the Plaintiff do pay to him Kshs. 66 million, interest at court rates and costs of the suit.

9. It is upon the above brief background to the suit that the Defendant filed notice of Preliminary Objection dated 14/01/2025, which is the subject of this ruling.

Defendant's Preliminary Objection dated 14/01/2025

10. Four are raised

- 1) *That this Honourable Court lacks jurisdiction by dint of the provisions of Section 13 of the Environment and Land Court Act and Practice Directions issued by the Chief Justice on November 18, 1997, to hear and determinate the suit.*
- 2) *That the nature of the claim and reliefs sought in the plaint arise from a dispute on a lease agreement over property known as Lr. No. 209/10236 situate off Mombasa Road, and breach of contract which are a remit of the Environment and Land Court, and the High Court of Kenya Commercial and Tax Division, respectively.*
- 3) *That the suit has been commenced by the Plaintiff without compliance with Order 1, Rule 1(4) of the Civil Procedure Rules, 2010.*
- 4) *That the suit is therefore incompetent, an abuse of this Honourable Court's process and ought to be struck out with costs.*

11. Directions were issued that the parties file written submissions on the Preliminary Objection on 1/10/2025.

12. In these proceedings, the Plaintiff is represented by J. K, Mwangi Advocates whereas the Defendant is represented by Seko Minayo & Co Advocates.

Defendant's submissions dated 1/02/2025

13. In urging the court to dismiss the suit for want of this court's jurisdiction, the Defendant argued that the suit as filed exhibits two causes of action; one arising from a breach of a lease agreement over some property whereof arrears of rent stand at Kshs. 13,465,000/= at date of filing suit.

14. The 2nd causes of action, the Defendant states arises from a breach of contract for the leasing and or purchase of printing machines which he says, falls squarely under the commercial and tax Division of the High Court the sum claimed being Kshs. 78,732,500.

15. For the above, the Defendant posits that the Preliminary Objection is merited based on provisions of **Section 13 of the Environment and land Court Act.**

16. The Defendant cites the case **Phoenix of E. A Assurances co. Ltd v. S M Thiga t/a Newspaper Service [2019] eKLR** where the court of Appeal emphasized that jurisdiction is everything in a suit, that once a court has no jurisdiction, the remedy is for the case to be withdrawn and be filed in a court seized with jurisdiction; that a suit filed in a court without jurisdiction is dead on arrival, and cannot be

remedied that the court cannot confer jurisdiction upon itself.

17. As to whether this court (High Court) has jurisdiction to hear the suit, the Defendant submits that the case having arisen for a dispute on rent arrears, it ought to have been filed at the ELC urging the court not to transfer it to the ELC court, but rather to dismiss the suit saying that the nature of reliefs sought in the plaint are remit of the Environment and land court, and the commercial division of the High Court.

Plaintiffs Submissions Dated 27/06/2025

18. I have perused the Plaintiff submission. On the face of the submissions, it is obvious that they do not relate to this case. They relate to a case filed at the Chief magistrates Court at Milimani without further consideration. It is safe to find and hold that the Plaintiff has not filed submissions on the Preliminary Objection.

Analysis and Determination

19. The question that ought to be discussed and answered here is whether at time of institution of the suit by the Plaintiff dated 19/11/2024 the Defendant was a tenant of the Plaintiff and whether the lease agreement or contract between the two parties in respect of the purchase/lease of machines was in tune or had been terminated. This is so because the

answer will determine which court has jurisdiction to hear the dispute.

20. The land and Environment Court vide the Land and Environment Court Act Section 13 provides that for the disputes that the court is mandated to hear, read together with **Article 162 (2) (b) of the Constitution**, the court is empowered to hear disputes touching on the use, management, administration and rates, rents, valuations of land among others touching on land Section 13 of the ELC Act is more specific on the jurisdiction of the land and Environment court thus disputes

- (13)(2) a) Relating to Environmental Planning and Protection, climate issues, land use planning title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.
- b) Relating to compulsory acquisition of land among others
- c) Relating to land administration and management
- d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land and
- e) Any other dispute relating to environment and land.

21. My understanding of these statutory and constitutional provisions, there must be a dispute involving land use title, rent and rates among them, it is not under dispute that the

relationship between the Landlord and the Tenant (herein Plaintiff and Defendant) was terminated on .../11/2024 that at the date the Defendant had arrears from the tenancy agreement Kshs. as alleged.

22. Thus at the date this suit was filed, the relationship had been terminated. The rent arrears may be classified as a debt owed by the Defendant to the Plaintiff referencing Section 13 ELC Act, it would have been appropriate to have the Rent arrears dispute heard in the ELC court had there been a landlord tenant relationship.
23. I agree with the Defendant that the nature of the dispute here is in regard to a lease agreement over the referenced property but upon the lease agreement termination that relationship was severed , leaving the landlord to chase the tenant in a civil court for payment of the rent/lease arrears.
24. The Civil Division of the high court has original and unlimited jurisdiction to determine civil matters and disputes as well as appellate and supervisory jurisdictions. It is empowered to hear contractual disputes arising from breach of contract and agreements; tortious claims defamation, negligence claims and other specific disputes as well as miscellaneous civil applications.
25. Of relevance her, the Civil Division is empowered to hear and determine disputes arising from commercial and residential

tenancies that do not fall under the specialized courts like the land and environment court.

26. However, the High Court in its original jurisdiction is empowered to adjudicate on disputes over rent arrears upon termination of tenancy relationship between tenant and landlord; as held in the case of **Maheer Unissa Karim v. Edward Oluoch Odumbe [2015] eKLR** and observation so made by the court in case of **Vauxhall Limited Mariangela Beltrami and Karen Blixenco. Ltd vs. Mtwapa Bay Investment, for Beyond Auctioneers, Malindi Auctioneers and Dolce Casa Pwani Limited [2019] eKLR** wherein **R Nyakundi J**, faced with a similar issue of shared jurisdiction made observations that;

“When faced with a controversy whether a particular case is a case is ad dispute about land (which should be litigated at the ELC) or not, the courts utilize the Pre-dominant test; in a transaction involving both sale of land and other services or goods, jurisdiction lie at the ELC if the transaction is predominantly land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction or works”

27. What is the dominant claim in this suit?

In my view, the tenant, landlord relationship having been terminated, and looking at the reliefs sought by the plaintiff

in his statement of claim at par. 5 of the plaint for breach of contract to pay sums to the extent of over Kshs. 180 million for breach of contract (see par. 10 (a) (b) (c); par. 11 and 12 of the plait

On the alleged rent arrears the Plaintiff claims about Kshs. 13,465,000/= plus interest in both demands and claims from October 2024 to date of filing this suit.

28. It is obvious that the dominant claim here concerns not the Rent arrears (Kshs. 13,465,000) but what the Plaintiffs claims as damages and loss for breach of contract to the tune of over Kshs. 180,000,000/-.
29. In this case, I have examined the plaintiffs claim. I am persuaded that the dominant claim arises from breach of contract, which falls under the jurisdiction of the High Court. For the above findings, I am persuaded that the Defendants Preliminary Objection dated 14/01/2025 is dismissed.
30. On costs, **Section 27 of the Civil Procedure Act** gives the court discretion to determine to whom and by who costs shall be paid.
31. **In this instance, the order that comments itself to me is that costs of the preliminary Objection shall abide outcome of the suit.**

Orders accordingly.

**Delivered Dated and Signed at Nairobi this 5th March,
2026.**

.....

JANET MULWA.

JUDGE

ORIGINAL