

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ELC APPEAL NO. E015 OF 2025

JUDITH WABOSHA MWAMBURI

T/A KADDY FASHION AND SUPPLIES.....
.....APPELLANT

=VERSUS=

MBOLOLO USHIRIKA COMPANY LTD
RESPONDENT

RULING

1. The salient issue for determination in this ruling is whether this court lacks jurisdiction to hear and determine this appeal pursuant to Section 15(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishment Act (Cap 301) Laws of Kenya as read with Section 2(1) of the same Act.
2. The Respondent vide its Preliminary Objection dated 22nd January 2026 contends that this court lacks jurisdiction.
3. Section 15(1) of Cap 301 stipulates as follows:-

“Any party to a reference aggrieved by any determination or order of a Tribunal made therein

may within thirty days after the date of such determination or order, appeal to the Environment and Land Court provided that the Environment and Land Court may, when it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.”

4. The Respondent contended that the Appellant has no right of appeal and the court ought to uphold the Preliminary Objection.
5. The Preliminary objection was opposed. It was contended that the Appeal was filed within 30 days window as was provided for under Section 15 of Cap 301. The impugned judgment was delivered on 14th July 2025 and the Appeal was filed on 15th July 2025. It was further contended that even if the Appeal was filed outside the statutory 30 days window, Section 15 of the Act gives this Court discretionary powers to extend the timelines.
6. Both parties filed written submissions in respect to their respective position taken on the said Preliminary Objection. The Appellants filed submissions dated 3rd

February 2026 while the Respondent filed written submissions dated 5th February 2026. The Court has duly considered the said submissions.

7. As earlier stated, the salient issue for determination is whether this Court has jurisdiction to hear and determine the appeal pursuant to Section 15(1) of Cap 301.

8. In the instant appeal, the Respondent argued that the matter at the Tribunal was a complaint under Section 12(4) of Cap 301 and that the parties therein are not parties to a reference within the meaning of Section 15(1) as read within Section 2 of the Act and as such the Court does not have jurisdiction to consider this appeal. Reliance was placed on the following cases **Re Hebtulla Properties Ltd (1979) eKLR, Gatanga General Store & 2 Others =Versus= Githere (1988) eKLR and Mike Muli =Versus= Justus Mwandikwa Kilonzo & Others (2022) eKLR.**

9. It is clear that the principles for a court to consider on issue of jurisdiction was clearly spelled out by the Supreme Court jurisdiction in the Case of **Samuel Kamau Macharia & another v Kenya Commercial Bank**

Limited & 2 others [2012] eKLR, where the Supreme Court observed as hereunder;

“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 counsel for the 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”.

10. From the submissions of the parties specifically the Respondent’s submissions, it can be stated that the Respondent has taken the position that this Court does not have jurisdiction to hear the Appeal if the proceedings before the BPRT were instituted by way of a complaint and

under Section 12(4) of Cap 301 and not a reference as envisaged under Section 2 and 6 of the Act.

11. From a perusal of the record of appeal, it is evident that the Appellant filed a reference under Section 12(4) of Cap 301 dated 24th March 2022 which was later amended on 24th January 2023 and the same formed a basis of the Tribunal proceedings and its subsequent judgment of 4th July 2025. It therefore follows that as to whether the Tribunal's proceedings were instituted by a complaint as raised by the Respondent is not a clear fact that can lead to upholding the Preliminary Objection to the extent that if allowed will lead to the dismissal of the appeal at this stage.

12. It is also worth noting that the issues raised in the Respondent's preliminary objection and submissions can only be determined and considered on merit and not at this preliminary stage. The said issues cannot be considered summarily in the manner sought by the Respondent without hearing the Appeal.

13. As was discussed in the case of **Oraro v Mbaja [2004] eKLR**, where the court (per Ojwang J. as he then was);

“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 processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears 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.”[Emphasis mine]

14. In the circumstances it is the finding of this Court that the issues raised in the Respondent’s Preliminary Objection and its written submissions cannot be

considered summarily in the manner sought by the Respondent without considering the appeal.

15. Consequently, it is the finding of this Court that the Respondent's objection dated 22nd January 2026 is unmerited and the same is dismissed. Its costs to abide the outcome of the appeal.

Dated, Signed and Delivered Virtually at Voi this 19th day of March, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

Mr. Motuka for the Appellant.

Mrs Ali for the Respondent.

Court Assistants: Mary Ngoira and David Ngoosa.