



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI LAW COURTS, NAIROBI**  
**ELC CASE NO E526 OF 2024**

**SHANTABEN AND ASSOCIATES**

..... **PLAINTIFF (C/O SHABANA  
OSMAN & O. ASSOCIATES, ADVOCATES)**

**-VERSUS-**

**TILE CITY LIMITED.....1<sup>ST</sup>**

**DEFENDANT KRISHNA KANDIMALLA.....**

.....**2<sup>ND</sup> DEFENDANT VIJAYBABU**

**KANDIMALLA.....3<sup>RD</sup> DEFENDANT**

**KARUNA KANDIMALLA.....4<sup>TH</sup>**

**DEFENDANT**

**RULING**

**Introduction**

1. The matter is in relation to shop number one on ground floor on land parcel No 209/4360/38 1160/1116/1 herein referred to as the suit property. In the plaint dated 19<sup>th</sup> December 2024 the plaintiff prays for the following;

- a.** Ksh 3,000,661/= being rent arrears for the period March 2024 to October 2024

- b.** Ksh 6, 614,356 in respect of the loss and damage for the unlawful expiry of the leased for the unexpired period of the lease being from November 2024 to February 2026
  - c.** The costs of the suit
  - d.** Interest on the costs above
  - e.** Any other relief that the court may deem fit
- 2. The defendants in response filed a notice of preliminary objection dated 18<sup>th</sup> September 2025 citing that the court lacked jurisdiction to entertain the suit under section 13 of the Environment and Land Act and further that it also lacked pecuniary jurisdiction over the same.
- 3. The plaintiff responded to the preliminary objection in an affidavit sworn by Shilpa Zaverchand Lalji Shah dated 14<sup>th</sup> October 2025 where he deponed that the tenancy relationship commenced in 2020 and was for a period of 5 years and 3 months which time had not lapsed as at time of the filing of the suit.
- 4. That the defendant had unlawfully vacated the premises breaching the terms of the agreement which provided for the termination of the tenancy of February of 2026 this being while still in arrears for rent.
- 5. That the suit was for breach of terms of a tenancy agreement which was a contract on land involving the rights of the plaintiff on the use

and occupation of land hence the court is vested with jurisdiction on the same

6. The court ordered for the preliminary objection to be canvassed by way of written submissions

#### Defendants' submissions

The defendant submitted that there was no landlord tenant relationship that existed as at the time the suit was filed hence any alleged rent arrears as raised ought to be determined in a civil court. That the moment the tenancy was terminated as between them and the plaintiff, the court's jurisdiction cannot be invoked

#### Plaintiff's submissions

The plaintiff reiterated the content of their replying affidavit and insisted that the court had jurisdiction being that the matter involved the use and occupation of land relying on the predominant purpose test and quoting the case of Amina Mohamed Harith Vs Chakama Ranching Company Limited & 5 others (2023) KEHC 1572 (KLR)

#### **Analysis and Determination.**

7. The issue for determination is whether the Notice of preliminary objection dated 18<sup>th</sup> September 2025 is merited

The threshold of a preliminary objection was set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696 as follows:

“...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit.”

The Court went further to note that: -

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure 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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop. Likewise, the Court in the case Oraro v Mbaja [2005] eKLR 141, on the nature of preliminary objections observed that:

“A preliminary objection 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. 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. Where a court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

The preliminary objection in this matter is founded on the notion that the court lacks the jurisdiction to entertain the suit being that the dispute does not fall under the disputes captured in section 13 of the Environment and Land Court Act .It goes without saying that without the requisite jurisdiction a court of law down sits tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The objection, therefore, attains the threshold of a pure preliminary point of law. The objection is also clear on the provision of the law allegedly contravened.

What then follows for this court’s consideration is whether the objection ought to be sustained.

The lease agreement relied on by both parties indicate that the agreement was signed on the 25<sup>th</sup> November 2020 and it was to be for 5 years and 3 months which time would have lapsed on the

February of 2026. This suit was filed on the 19<sup>th</sup> December 2024 which points out that the tenancy agreement was still in place. The defendant's contention is not on the existence of the tenancy agreement but rather that it had lapsed and therefore the court cannot sit to entertain the dispute. Having established that there still existed a tenancy relationship as between the parties and the parties were bound to the agreement, it therefore follows that there was a breach in the tenancy agreement which breach can be addressed in this court.

Section 13(2)(e) of the Environment and Land Court Act grants the ELC jurisdiction over disputes relating to land, including leases, tenancies, and contracts involving land. In the case of Paul Mwai & another v John Muiruri (2020) eKLR, the court held that disputes involving land use, occupation, and title must be heard by the ELC. The court emphasized that the High Court cannot usurp the jurisdiction of the ELC.

As already submitted, there is a valid lease agreement in question which lease agreement is a contract involving land, and its termination directly affects the Plaintiff's rights to occupy and use the property. The tenancy agreement ended in February 2026 when the suit had already been filed and the dispute as it is, still tied to the lease agreement and the use of land. This places the dispute

within the jurisdiction of the ELC, as held in **Paul Mwai & another v John Muiruri (2020) eKLR.**

On the issue of pecuniary jurisdiction, it is my view the Magistrates Courts Act does not oust the jurisdiction of this court to hear and determine cases filed before it whose value is below Kshs 20 million. I respectfully agree with Plaintiffs submission that this court has jurisdiction to entertain the matter. The ELC Court has original jurisdiction though it is always in order for cases to be filed in the lowest court taking into account pecuniary jurisdiction. The court will always transfer a suit in this regard to the lower court but not to strike out a suit as invited by the Defendants. The Court of Appeal has in numerous cases expressed that striking out pleadings should be the last resort. I would place reliance on the case of Yaya Tower Ltd v Trade Bank Ltd (In Liquidation) Civil Appeal No. 35 of 2000 echoing this position.

The Preliminary Objection raised by the Defendants is not merited. The dispute in this case relates to the use and occupation of land, which falls within the exclusive jurisdiction of the Environment and Land Court.

**Final disposition**

The upshot of the foregoing is that I make the following order;

1. THAT the notice of preliminary objection dated 18<sup>th</sup> September 2025 lacks merit and is hereby dismissed with costs to the plaintiff

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **23<sup>rd</sup>** day of

**March, 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**

**Ruling delivered in the presence of: -**

**Mr. Shabana**..... for the Plaintiff

**Mr. Kawarda**..... for the Defendants

**Philomena W.**..... Court Assistant