

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELCLA APPEAL NO. E030 OF 2025**

**NTEMI LIMITED** .....

.....**APPELLANT**

**VERSUS**

**MOSES KINYANJUI** .....**1<sup>ST</sup>**

**RESPONDENT**

**NANCY WANJIKU** .....**2<sup>ND</sup>**

**RESPONDENT**

**MONICA NJOKI KIMANI**.....**3<sup>RD</sup>**

**RESPONDENT**

*(Being an appeal from the Ruling and orders of Hon. Patrick Kitur, Business Premises Rent Tribunal Case No. E581 of 2024)*

**JUDGMENT**

1. This is a first appeal by the Appellant (the Tenant) against the Ruling and Orders of the Business Premises Rent Tribunal (hereinafter “the Tribunal”) delivered **on 2nd December 2024 in Nairobi BPRT No. E581 of 2024.**

2. By a Complaint/Reference and Notice of Motion dated **20th May 2024**, the Tenant sought injunctive orders to restrain the Respondents (the Landlords) from levying distress for alleged rent arrears of **Kshs. 150,000/-** following a Proclamation Notice dated 9th May 2024. The Tribunal, after considering the affidavits, replying affidavit, supplementary affidavit and written submissions, dismissed the application and the Complaint in its entirety. It ordered the Tenant to pay the arrears of **Kshs. 150,000/-** together with accrued charges within **seven (7) days**, failing which the Landlords would be at liberty to levy distress through a licensed auctioneer. Costs were awarded to the Landlords at **Kshs. 30,000/-**, and the file was marked closed.
3. Aggrieved by the said decision, the Tenant filed a Memorandum of Appeal dated **11th February 2025** raising six (6) grounds which included, the Tribunal erred in law and fact in failing to consider that the Appellant was not in any rent arrears, the Tribunal misdirected itself in law and fact by failing to consider that the Tenant had been paying rent and utility bills without fail for over 20

years, the Tribunal erred in law and fact in failing to consider that the Respondents did not have locus standi to issue the Proclamation Notice since the registered owner (Pius Kimani Mwaura) was deceased and no grant of representation had been issued, the Tribunal erred in failing to consider the submissions and affidavit evidence adduced by the Tenant/Appellant and the Tribunal erred in failing to give a ratio decidendi for its decision, contrary to law and procedure. The sixth ground essentially complained that the Appellant was condemned unheard and that the Tribunal disposed of the entire Complaint without a full hearing of the main suit.

4. The Appellant prays that the appeal be allowed, the Tribunal's ruling and all consequential orders be set aside, and the Complaint/Reference dated 20th May 2024 be allowed as prayed. In the alternative, the matter be remitted for hearing on merit before a different judicial officer other than **Hon. Patrick Kitur.**
5. Upon admission of the appeal and pursuant to the directions of this Court, the appeal was canvassed by way of written submissions. The Appellant filed submissions

dated **8th March 2026** while the Respondents filed theirs dated **1st April 2026**.

6. It was the Appellants case that it has occupied the suit premises (LR No. 209/16/14/15) for over 20 years under the late Pius Kimani Mwaura (deceased). Throughout the tenancy, no demand for arrears was ever made by the deceased. Upon his death, the Respondents suddenly demanded Kshs. 150,000/- in 2018 without providing a breakdown. The Appellant annexed bank slips and receipts showing consistent payment of rent and utilities up to 2024. It contends that the Respondents lacked locus standi because the registered owner is deceased and no full grant of representation was produced; a mere assertion of representation is insufficient. Reliance was placed on **Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] KEHC 4186 (KLR)**.

7. According to the Appellant, the Tribunal ignored the Tenant's evidence, failed to hear the main Complaint,

gave no reasoned decision, and violated **Article 50(1) of the Constitution.**

8. The Respondents assert they are the duly appointed administrators of the estate of the late **Pius Kimani Mwaura**, having obtained a Limited Grant of Letters of Administration Ad Litem on **25th April 2019**. This grant vests them with legal capacity to manage the estate, including recovery of rent. The Tenant is in arrears of Kshs. 150,000/- as confirmed by an audit report; it has refused to formalise a new lease at the current rent of Kshs. 25,000/- per month, sub-let without consent, and persistently defaulted. The Proclamation Notice complied with the **Distress for Rent Act (Cap 293)**. The Tenant failed to rebut the arrears on a balance of probabilities. The proceedings were by written submissions after affidavits, satisfying fair hearing requirements as set out in the case of **Judicial Service Commission v Mbalu Mutava & another [2015] eKLR**. The Tribunal's decision is reasoned and should not be interfered with unless shown to be plainly wrong.

9. According to the Respondents, the injunction was rightly refused as the Tenant failed the **Giella v Cassman Brown & Co. Ltd [1973] EA 358** test.
10. This Court's appellate jurisdiction is anchored in **Article 162(2)(b) of the Constitution of Kenya, 2010 and Section 13(1) and (4) of the Environment and Land Court Act, No. 19 of 2011 (ELC Act). Section 13(4)** expressly confers appellate jurisdiction over decisions of local tribunals, including the Business Premises Rent Tribunal established under **Section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301.**
11. **Under Section 78(1) of the Civil Procedure Act,** an appellate court has power:
- (a) to determine a case finally;***
  - (b) to remand a case;***
  - (c) to frame issues and refer them for trial;***
  - (d) to take additional evidence or to require the evidence to be taken;***
  - (e) to order a new trial.***

**Section 78(2)** further provides that the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Act on courts of original jurisdiction in respect of suits instituted therein.

12. The Court is also guided by the **Civil Procedure Rules, 2010 (Order 42)**, which empower an appellate court to confirm, vary, reverse or set aside the decision appealed from and to make such orders as the justice of the case demands. As a first appellate court, this Court must re-evaluate the evidence and reach its own conclusions but will not lightly interfere with the Tribunal's findings unless they are based on no evidence, a misapprehension of evidence, or are plainly erroneous as was stated in the case of **Selle & another v Associated Motor Boat Co. Ltd [1968] EA 123.**

13. Having distilled the six grounds of appeal and the parties' submissions, the following are the issues for determination:

***(i) Whether the Respondents had locus standi to issue the Proclamation Notice of 9th May 2024.***

***(ii) Whether the Appellant was in rent arrears of Kshs. 150,000/-.***

***(iii) Whether the Tribunal erred by failing to consider the Appellant's evidence, submissions and the 20-year payment history.***

***(iv) Whether the Appellant was denied a fair hearing contrary to Article 50(1) of the Constitution.***

***(v) Whether the Tribunal failed to provide a ratio decidendi.***

***(vi) Whether the Tribunal's decision and orders warrant interference on appeal, and what orders this Court should make.***

14. This court shall now proceed to address the said issues sequentially.

15. On whether the Respondents had locus standi, it is noteworthy that the Respondents produced a Limited Grant of Letters of Administration Ad Litem issued on 25th

April 2019. Under the **Law of Succession Act Cap 160**, a grant vests legal capacity to act on behalf of the estate. This position was also applied in the case of **Trouistik Union International & another v Jane Mbeyu & another [1993] eKLR**. While a limited ad litem grant is primarily for instituting or defending suits, the Respondents are also beneficiaries and have been managing the estate, including rent collection. The Tenant continued to occupy the premises and engage the Respondents post-demise, creating estoppel. The **Julian Adoyo Ongunga case (Supra)** is distinguishable because a grant existed here; there was no intermeddling. The Tribunal correctly found the Respondents had capacity. This ground fails.

16. On the existence of the rent arrears, **Section 3(1) of the Distress for Rent Act Cap 293** entitles a landlord with rent in arrears to levy distress. The Respondents adduced an audit report showing arrears. The Tenant bore the evidential burden to prove payment on a balance of probabilities in line with the position taken in the case of **Palace Investment Ltd v Geoffrey Kariuki Mwenda &**

**another [2015] eKLR.** Its receipts covered periods outside the audited arrears or did not show excess payments to offset the debt. The 20-year history of payments without prior demand does not negate the specific arrears claimed from 2017. Payments after default constituted acknowledgment, resetting the limitation period under **Section 12(2) of the Limitation of Actions Act Cap 22.** The Tribunal rightly held that rent was in arrears and distress was lawful. A similar position was applied in the case of **Kenya Breweries Ltd v Kiambu General Transport Agency Ltd [1970] EA 398.** This ground fails.

17. On the failure to Consider Evidence and 20-Year Payment History, a perusal of the record of appeal shows that the Tribunal expressly acknowledged the Tenant's bank slips and supplementary affidavit but found them insufficient to rebut the audit for the relevant period. The 20-year payment history was noted but did not address the specific arrears. The Tribunal evaluated all material placed before it. No error is demonstrated.

18. In respect to fair hearing under **Article 50(1) of the Constitution**, it is evident from the proceedings of the Tribunal that the Tribunal directed written submissions after full affidavits from both sides. Both parties filed comprehensive submissions. While Article 50(1) guarantees an opportunity to be heard; it does not mandate an oral hearing in every case as was stated in the case of **Judicial Service Commission v Mbalu Mutava & another [2015] eKLR**. The Appellant fully participated. No violation occurred.
19. On the absence of ratio decidendi, The Tribunal's Ruling contains a clear structure: background, issues framed, analysis of evidence against statutory provisions (Distress for Rent Act, Limitation of Actions Act), application of case law, and reasoned conclusions. A ratio decidendi is discernible. This ground is without merit.
20. Having re-evaluated the entire record, this Court finds no misdirection, misapprehension of evidence or error of principle. The Tenant failed to establish a prima facie case for injunction in line with the principles set out in the cases of **Giella v Cassman Brown & Co. Ltd**

**[1973] EA 358; Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR**). The Tribunal properly exercised its discretion under **Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act** and did not abuse process by determining the intertwined application and Complaint on the material before it. No basis exists to interfere or remit the matter.

21. In respect to costs, although the appeal has failed, this Court is of the view that each party should bear its own costs of this appeal. This departure from the general rule that costs follow the event is justified by the peculiar circumstances of the case. The dispute arose in the context of a long-standing tenancy of over 20 years. In the interest of justice and to foster an amicable resolution of landlord-tenant matters involving an estate, the Court exercises its discretion under **Section 27 of the Civil Procedure Act (Cap 21)** to order that each party bears its own costs of the appeal.
22. In conclusion, it is the finding of this court that the appeal is devoid of merit and the same is hereby

dismissed in its entirety. The Ruling and Orders of the Tribunal delivered on 2nd December 2024 are upheld. Each party shall bear own costs of this appeal.

**Dated, Signed and Delivered virtually this 14<sup>th</sup> day of April 2026.**

**E.K. WABWOTO  
JUDGE**

**In the presence of:-**

**Mr. Ngure for the Appellant.**

**Ms. Njeri Kiarie h/b for Mr. Mwaura for the Respondents.**

**Court Assistants; Mary Ngoira and David Ngoosa.**