



**Rashid & 3 others v Tusker Mattress Limited (Civil Suit
E021 of 2021) [2026] KEHC 4961 (KLR) (15 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL SUIT E021 OF 2021
SM GITHINJI, J
APRIL 15, 2026**

BETWEEN

**YASMIN ABDUL RASHID 1ST PLAINTIFF
TARIQ ABDUL RASHID 2ND PLAINTIFF
RIZVAN ABDUL RASHID 3RD PLAINTIFF
NAUSHEEN ABDUL RASHID 4TH PLAINTIFF**

AND

TUSKER MATTRESS LIMITED DEFENDANT

JUDGMENT

1. Vide a plaint dated 16/8/2021, the Plaintiffs sought the following prayers:
 - a. A declaration that the Defendant is in breach of the Lease Agreement dated 31st May, 2013 between the Defendant and the Plaintiff.
 - b. The Honourable Court be pleased to grant its approval to the Plaintiff to exercise its right of forfeiture and peaceable re-entry into the premises occupied by the Defendant and situate on building erected Title Number Meru Municipality Block I/219.
 - c. An order directed at the Defendant to immediately vacate the premises situate in the building erected on Title Number Meru Municipality Block I/219 and in any event not later than 7 days of this order.
 - d. The following arrears owed as at 15th June, 2021:
 - i. Outstanding rent at Kshs. 44,874,000/=;
 - ii. Outstanding interest arrears at Kshs. 5,725,018.13/=.



- iii. Outstanding water and sewerage service charge at Kshs. 130,762.50/=;
 - iv. Outstanding electricity charges at Kshs. 1,503,836.15/=.
 - e. Interest at court rates from the date of default till settlement.
 - f. An order directed at the Defendant to pay to the Plaintiff all outstanding rents, service charge, promotion fund and all payments accrued to the Plaintiff at the date of vacating the premises.
 - g. Costs of this suit.
 - h. Any other and further relief this Court may deem just to grant.
2. While the Defendant entered appearance, it did not file any defence, and the matter proceeded for formal proof on 17/12/2025, when the 2nd Plaintiff testified as PW1. He told the court that the Plaintiffs are the registered

proprietor as Lessee of Title Number Meru Municipality Block I/219 measuring 0.01190 Ha. By a lease made on 31/5/2013, the Plaintiffs

agreed to lease out to the Defendant all that space cumulatively measuring Sixty-Seven Thousand, Five Hundred Square Feet (67,500 Sq. Ft.) comprising the Basement area measuring 13, 500 Sq. Ft., the Ground Floor measuring 13, 500 Sq. Ft, the First Floor measuring 13, 500 Sq. Ft, the Second Floor measuring 13, 500 Sq. Ft and the Third Floor measuring 13, 500 Sq. Ft (hereinafter referred to as “the Premises”). The premises were demised to the Defendant for a term of 10 Years at a rent of Ksh. 45/= per Square foot (exclusive of VAT) payable monthly in advance on or before the 15th day of each month. The rent payable under the Lease was subject to an escalation clause of Five percent (5%) at Two and a half yearly intervals, and as such, the rent was increased to Ksh. 49.60 per square foot as at 1/6/2018 to 30/11/2020 and Ksh. 52.10 per square foot as at 1/12/2020. The Defendant has failed, refused and/or neglected to pay rent due under the Lease since July 2020, and arrears totaling Ksh. 44,874,000 have accrued. The Defendant has also failed, refused and/ or neglected to pay Water and Sewerage Services due under the Lease since July 2020, and arrears totaling Ksh. 130,762.50 have accrued. The Defendant has equally failed and/or refused to pay for the electricity consumption to Kenya Power, and the outstanding amount stands at Ksh. 1,503,836.15. The Lease includes at Clause 5, a proviso for re-entry entitling the Plaintiffs to forfeit

the lease if rent is unpaid, and by service of these proceedings, the lease is forfeited to the Claimant. On or about 8/6/2021, the Plaintiffs served on the Defendant a Notice pursuant to Section 75 of the Land Act 2012 specifying the breach of covenant herein complained of and requiring the Defendant to remedy the breach within a reasonable period, which notice was blatantly ignored.

Submissions

3. The Plaintiffs, through the firm of Tariq Khan & Associates, filed submissions dated 30/3/2026. Counsel submitted that the Defendant defaulted in the repayment of rent and utilities, thereby breaching the terms of the lease, and cited National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] KECA 362 (KLR) and Primrose Limited & 3 Others v Nakumatt Holdings Limited & Another [2018] KEHC 10010 (KLR), Syan & 2 Others v Kihoro [2025] KEELC 5176 (KLR) and Samaki Industries (K) Limited v Kenya Ports Authority [2024] KECA 794 (KLR). Counsel relied on Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others (2014) eKLR and Bank of Africa Kenya Limited v Setlight Supermarket Limited & 4 Others [2025] KEHC 7222 (KLR) for the proposition that parties are bound by their pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made.



Disposition

4. Having considered the pleadings herein, the evidence and the submissions on record, I discern the issue for determination to be whether the Plaintiffs have proved their case against the Defendant to the required standard.
5. Before delving into the merits of the case, I have grappled with the question whether this court is vested with the jurisdiction to determine the suit.
6. In the locus classicus case of Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Ltd [1989] eKLR, the Court of Appeal stated that: “Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
7. The Supreme Court in Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012] KESC 8 (KLR) enunciated that,

“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 first and 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.”
8. Article 162 (2) (b) of *the Constitution* establishes the Environment and Land Court to hear disputes relating to the environment, use, occupation, and title to land.
9. Section 13 (2) (e) of the *Environment and Land Court Act* vests the Environment and Land Court with jurisdiction over disputes relating to (a) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) compulsory acquisition of land; (c) land administration and management; (d) 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.
10. Section 150 of the *Land Act* provides that; “The Environment and Land Court established in the *Environment and Land Court Act* (Cap. 8D) and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”
11. The Plaintiffs’ suit is hinged on a lease agreement of L.R No. Meru Municipality Block 1/219, pursuant to which they seek, inter alia, a declaration that the said lease agreement was breached, vacation of the premises together with payment of accrued rent. The lease agreement constitutes a contract relating to an interest in land, and its termination or otherwise directly affects the respective rights and obligations of the parties thereto.
12. I find that the dispute herein relates to the use and occupation of land, which falls within the exclusive jurisdiction of the Environment and Land Court.
13. As regards the Court of Appeal cases of Samaki Industries (K) Limited v Kenya Ports Authority [2024] KECA 794 (KLR) and Patel & Another v MJC & Another (Suing as the guardians of PJP) [2022]



KECA 364 (KLR), relied on by the Plaintiffs, I note that the primary suits were commenced in the Environment and Land Court, wherein one of the issues was payment of accrued rent.

14. A lease is an interest in land, so any dispute concerning:
 1. Enforcement of lease terms
 2. Recovery of rent
 3. Termination due to breach (e.g non – payment) falls squarely within the ELC’s jurisdiction.
15. The inevitable conclusion is that Plaintiffs’ suit is hereby struck out, for want of jurisdiction.

DATED AND DELIVERED AT MERU THIS 15TH DAY OF APRIL, 2026.

S.M. GITHINJI- JUDGE

15/4/2026

In the Presence of:

Mr. Malik holding brief for Mr. Khan for the Plaintiff.

Respondents (Absent)

