

- 1.** The appellants herein were tenants of the respondent/land lord within plot no. Block 6585/460 situated in Nyahururu Town. The land lord had apparently issued notices dated 6.3.2020 for the tenants to vacate the suit premises. Thereafter, several references were filed before the tribunal, some by the tenants and one by the landlord.
- 2.** The case was heard ex-parte on 23.3.2022 leading to a judgment dated 12.4.2022 in favour of the land lord. The tenants then filed an application dated 5.5.2022 seeking orders to set aside the said judgment on the basis that they were not served of which the said application was dismissed on 21.10.2022.
- 3.** The appellants have challenged the said ruling vide their memorandum of appeal dated 25.10.2022 raising grounds that the tribunal erred in law and fact in failing to set aside the orders of 12.4.2022, and holding that the appellants were aware of the hearing date.
- 4.** The appeal was heard by way of written submissions. The submissions of the appellants are dated 5.9.2025.

They argue that the matter was slated for mention on 23.3.2022 and not for hearing, and further, the appellants had no knowledge of the exparte judgment delivered on 12.4.2022. Citing the provisions of Article 50 (1) of the Constitution, the appellants contend that their right to a fair trial was violated. They have also relied on the case of **Richard Nchapi Leiyangu v IEBC & 2 Others Civil Appeal No. 18 of 2013** amongst other authorities.

5. The submissions of the Respondent are dated 31.10.2025 where they argue that the ruling of 12.4.2022 required the tenants to vacate the suit premises, of which the appellants were evicted on 25.10.2022. The land lord avers that the provisions of Article 50 of the Constitution do not apply herein as the appellants were given a chance to present their case but they failed to make an appearance, adding that on 23.3.2022, the Chairperson of the tribunal satisfied himself that the appellants had been served. The respondent relied on the case of **Obiero v Severin &**

**Another (Civil Appeal No. E201 OF 2023) (2025)
KEHC 2724 (KLR) (13 March 2025) (Judgment)**
amongst other cases.

6. This being a first appeal, this court reminds itself of its primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the evidence and then determine whether the conclusions reached by the tribunal are to stand as was the pronouncement of the court in the case of **Abok James Odera t/a A.J Odera & Associates Vs John Patrick Machira t/a Machira & Co. Advocates (2013) eKLR.**
7. The issue falling for determination turns on whether the ruling of 21.10.2022 and by extension, the judgment of 12.4.2022 before the tribunal should be set aside so as to enable the appellants to defend their cases.
8. I have carefully scrutinized the record. The proceedings which culminated in the exparte hearing can be sieved as from the date of 25.1.2022 when the matter came up for hearing. Counsel for the Land Lord was present, but there was no appearance for the tenants. The tribunal

stated that; *“There is no evidence of service. Counsel for the tenants to be served afresh. Reference will be heard on 10.2.2022”*. On 10.2.2022, there was no appearance for the tenants, but the Land Lord was present. The tribunal gave orders as follows; *“23.3.2022. Mention Notice to issue”*. And on the said date of 23.3.2022, the matter proceeded exparte.

9. From the aforementioned proceedings, it is clear that the matter was to proceed for hearing on 23.3.2022, as the only reason why it had not proceeded previously on 25.1.2022 was on account of none service upon the tenants. If the appellants are challenging the proceedings of 23.3.2022 ostensibly on the basis that it was a mention and not a hearing date, why then didn't they appear in court to clarify that fact.

10. In the supporting affidavit to their application of 5.5.2022, the tenants had stated that their advocate was not served. This issue was adequately captured by the Chairman of the tribunal in his ruling of 21.10.2022 where at paragraph 8, he states as follows;

“The question that begs an answer in the circumstances is whether actually the firm of N.A Owino & Co. Advocates who were on record for the tenants/applicants was served with the hearing notice in this matter. I have perused the affidavit of service sworn by Edward Maina Wachira on 16th March 2022 and paragraph 3 of the said affidavit is clear and detailed on the manner, style and place of the service of the hearing notice”.

11. As it were, the appellants have not demonstrated the efforts they were making to prosecute their case. To this end, they never appeared before the court or the registry on any date to take a hearing date for the main references. In **Mwangi Gachiengu & 2 Others -Vs- Mwaura Githuku & Another-(2019)eKLR** the court stated that;

“It is trite law that a matter once filed in court does not belong to the

advocate but to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter. Where a litigant goes to sleep after filing a suit, he cannot blame his advocate for having not updated him on the position of the matter”

12. A perusal of the reference no.123 of 2020, the one filed by the land lord captures his case as follows;

“That the tenants were issued with notices of termination of tenancies dated 6th March 2020 effective from 1st June 2020 to pave way for renovation and repairs following directive from Heath Officer. That I pray the Honourable Tribunal to order the respondents to vacate to give room for the landlord to do repairs”.

13. The fact that the landlord had cited the order from the public health should have pricked the conscience of the

tenants to hasten the prosecution of their cases. Instead, they appear to have taken a casual attitude to the reference and it is rather late in the day for them to get another opportunity to prosecute their claims.

14. In the end, I find that this appeal is not merited, the same is hereby dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 16TH DAY OF APRIL 2026 THROUGH MICROSOFT
TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Bedan/Vanessa - Court Assistants

Waichungo for the Appellants

**Ms. Wahome holding brief for Mathea for the
Respondent**