



**Khirrecu v Queensmed Hospital Limited (Environment and Land Case  
E109 of 2025) [2026] KEELC 2606 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2606 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E109 OF 2025**

**J OMANGE, J**

**APRIL 30, 2026**

**BETWEEN**

**MONICA MUKUHI KHIRRECU ..... PLAINTIFF**

**AND**

**QUEENSMED HOSPITAL LIMITED ..... DEFENDANT**

**RULING**

1. Before the Court for determination is an application dated 21<sup>st</sup> August 2025 in which the Plaintiff seeks an interim injunction restraining the Defendant from further construction, occupation and interference with property Kajiado/Kaputiei North/69174, and stay of proceedings in Business Premises Rent Tribunal Case No. BPRT/E719/2025.
2. The Defendant has filed a Preliminary Objection dated 16<sup>th</sup> October 2025 seeking striking out of the suit on grounds that it is res judicata, having been heard and determined by the Business Premises Rent Tribunal (BPRT) which decision has not been reviewed, appealed against or set aside.
3. The Plaintiff claims that she is the registered owner of property Kajiado/Kaputiei North/69174 which the Defendant has trespassed on and started undertaking illegal construction. She discovered the said construction on 30<sup>th</sup> March 2025, and on 1<sup>st</sup> April she reported to the Kajiado County Government offices which found that the construction is illegal. An eviction notice dated 28<sup>th</sup> April 2025 was then issued to the Directors of the Defendant.
4. Conversely, the Defendant filed a suit at the Business Premises Rent Tribunal and obtained orders which the Plaintiff alleges were based on misrepresentation of facts. She contests having leased out the property and that any agreement between the Defendant and her son James Muigai Khirrecu (hereinafter referred to as James) was illegal because he had no authority to act on behalf of the Estate nor was he an Administrator.



5. The Defendant filed a Preliminary Objection dated 16<sup>th</sup> October 2025 seeking the striking out of the suit on grounds that the same issue had been heard and determined in BPRT No. E719 of 2025 and the Tribunal's decision had neither been reviewed, appealed against or set aside.
6. The Plaintiff while contesting the objection filed a response arguing that her last born son James, has persistently sought to interfere with her property rights including an unsuccessful attempt to have the property declared part of his late father's estate, which the court rejected. She claimed that following a physical attack by the said James that endangered her life, she relocated to Loitoktok.
7. She claims that in her absence, the Defendant entered into an illegal and invalid lease agreement with James without her knowledge or consent. The Defendant thereafter commenced unauthorized construction on the premises, adding an upper floor to a structure she claims was not engineered to bear such load, thereby endangering occupants. The said construction being unauthorised, was condemned by the County Government of Kajiado.
8. Rather than ceasing construction, the Defendant instituted proceedings before the Business Premises Tribunal and obtained an interim restraining order which have been used to hinder her efforts to stop the illegal activities.
9. She argues that her claim is on ownership, use and occupation of land which is within this Court's jurisdiction.
10. The Defendant, through its Director Denis Gitobu depones that on 9<sup>th</sup> February 2025 he entered a lease agreement in respect of a business premises on Kajiado/Kaputiei/69174 with one James who was one of the Administrators of the Estate of Lawrence Khirrecu. He claims that upon entering the property and beginning renovations, the Plaintiff and her son Thomas Khirrecu began harassing him which led him to file a suit at the BPRT and on 26<sup>th</sup> June 2025, an interim injunction was issued against the Plaintiff.
11. The Plaintiff then filed the instant suit seeking stay/ vacation of the said order. The Defendant then filed a stay of the BPRT proceedings on 19<sup>th</sup> August 2025 due to an appeal pending at the Court of Appeal on the same suit property. He claims that his suit at the BPRT is not an ownership dispute but based on a lease agreement. As such, the suit is res judicata and this Court lacks jurisdiction to determine the dispute unless the orders issued on 26<sup>th</sup> June 2026 by the Business Premises Tribunal are vacated.
12. In the further Affidavit, the Plaintiff states that any agreement between the Defendant and James is invalid as he is not a legal representative of the Estate and his occupation of the suit property was akin to trespass and this court on 23<sup>rd</sup> October 2025 issued an injunctive order against use of the suit property by the Defendant.
13. These applications were canvassed by way of written submissions.
14. The plaintiff submitted that the lease signed by James relied on by the Defendant, was invalid because under Section 79, 82 and 83 of the [Law of Succession Act](#), all administrators must act jointly. That James having acted alone without the consent of the other two administrators thus invalidated the agreement as held in Re Estate of Makokha Idris (2019) eKLR and John Wacira Wambugu (2016) eKLR. It was also argued that the High Court in an order dated 20<sup>th</sup> February 2025 in High Court Probate and Administration case No. 2679 of 2000 determined that the subject property did not form part of the deceased's estate. As such, any claim that the lease was executed by an Administrator of the Estate of the late Lawrence was invalid. Therefore, no valid landlord-tenant relationship existed and the Business Premises Rent Tribunal lacks jurisdiction over the matter.



15. On whether the Plaintiff has met the threshold for injunctive reliefs sought, it was submitted that the Plaintiff being the registered owner of the suit property has a prima facie case and the suit property was at the risk of suffering irreparable damage since the Defendant was in the process of constructing a second floor on a foundation that did not meet the structural integrity to support a storey building. This harm and damage could not adequately be compensated by way of damages. As such, the balance of convenience tilted in favour of protecting lives by disallowing the construction of an unsafe building.
16. On whether the proceedings at the BPRT should be stayed, it was submitted that the Tribunal lacked jurisdiction to determine the issues raised by the Plaintiff citing *Cooperative Bank of Kenya Ltd v Patrick K. Njuguna*.
17. I have considered the applications, and submissions and distil the following issues for determination:
  - i. Whether the Defendant's Preliminary Objection is merited;
  - ii. Whether the Plaintiff is entitled to the reliefs sought in the application dated 21<sup>st</sup> August 2025.
  - iii. Who should bear the costs of the applications.
18. The Court shall first determine the preliminary objection which has the potential of disposing of the entire suit.
19. With guidance from the celebrated case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* [1969] EA 696 and affirmed by the Supreme Court of Kenya in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties)* [2020] eKLR, A preliminary objection should be raised on a pure point of law where there is no contest as to the facts. Where the Court is required to look beyond the pleadings to ascertain and evaluate competing factual versions, then the objection must fail on that threshold ground alone.
20. While the principle of res judicata as codified under Section 7 of the *Civil Procedure Act* goes to the jurisdiction of this Court, the said principle as raised in this objection has been contested.
21. The Defendant argues that this court has no jurisdiction to determine the question of lease agreements and that the same is before the BPRT. The Plaintiff affirms that indeed there is a suit at the BPRT but contends the Tribunal's jurisdiction on grounds that the lease being made reference to by the Defendant was invalid having been executed by a person with no authority.
22. It is clear there are, there are several contested facts which cannot be resolved from the pleadings. There are substantive issues requiring viva voce evidence and full trial, not final interlocutory determination. The preliminary objection therefore does not meet the established principles and is hereby dismissed.
23. The second issue for determination is whether the Plaintiff is entitled to the interlocutory reliefs sought and whether the BPRT proceedings should be stayed.
24. The principles governing applications for interlocutory injunctions were established in *Giella v Cassman Brown & Company Limited* [1973] EA 358 and reiterated in *Nguruman Limited v Jane Bonde Nielsen & 2 others* [2014] KECA 606 (KLR).
25. The conditions to be established are: whether the Applicant has established a prima facie case; whether the Applicant has demonstrated that irreparable injury will be occasioned if a temporary injunction is not granted, and if there are any doubts on the following, in in whose favour does the balance of convenience tilt.



26. On the condition whether a prima facie case has been established, it is not in contention that the suit property is registered in favour of the Plaintiff. However there are contested facts regarding the administration of the estate which ultimately affect the ownership which will only be resolved during the hearing. It is however clear that there is an ongoing construction which has been declared illegal by the county. This construction cannot continue.
27. On the question of stay of proceedings, the Defendant who alleges that he is a tenant has already invoked the jurisdiction of the Business Premises Tribunal which is the right forum to determine tenancy disputes. The question of whether or not the person who executed the tenancy agreement had legal authority to do so or not is an issue which can be raised before the Tribunal.
28. On the other hand, any issue relating to ownership is correctly before this court. The two processes may proceed until it is determined that there is a jurisdictional conflict which at this stage I am not satisfied has been proved.
29. Accordingly, the Court makes the following orders:
  - a. The parties shall maintain status quo as to possession, but no new developments, constructions, or alterations shall be undertaken by the Defendant on the property known as Kajiado/Kaputiei North/69174 pending the hearing and determination of this suit.
  - b. The prayer for stay of proceedings before the Business Premises Rent Tribunal is declined at this stage.
  - c. The Preliminary Objection is dismissed.
  - d. Costs shall abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**JUDY OMANGE**

**JUDGE.**

In The Presence Of:

Mr. Kiriaku for the Defendant/Respondent.

Mrs Kariuki for the Plaintiff/Applicant.

Peter – Court Assistant.

Ruling ELC No. E109 of 2025

