

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC APPEAL NO. E032 OF 2024

JULIOUS ODHIAMBO OKATCH.....APPELLANT

-VERSUS-

WILSON KIPTOO BIRGEN.....RESPONDENT

J U D G E M E N T

1. The Appellant herein did file a Memorandum of Appeal dated 26.06.2024 (hereinafter referred to as **“the present Appeal”**) against the Respondent seeking the following Orders; -
 - a) **The Appeal herein be allowed and the Ruling and/or Decree pronounced on the 14.06.2024 in the proceeding known as ELDORET BUSINESS PREMISES RENT TRIBUNAL NO. E079 OF 2023 be set-aside.**
 - b) **The Preliminary Objection dated 22.03.2024 be upheld.**
 - c) **Costs of this Appeal be awarded to the Appellant herein.**
2. The grounds upon which the Appellant did seek the Orders hereinabove are contained in the body of the present Appeal and can be summarised as follows; -
 - i) The Appellant herein is aggrieved by the Ruling and Decree issued on the 14.06.2024 (hereinafter referred to as **“the Tribunal Ruling”**) by HON.TERESA MAY (hereinafter referred to as the **“the Trial Court”**) in the proceeding known as ELDORET BUSINESS RENT PREMISES TRIBUNAL (hereinafter referred to as the **“Trial Court proceeding”**).

- ii) The Appellant did plead that the Trial Court did err both in law and in fact by disregarding the evidence before it.
 - iii) According to the Appellant, the Replying Affidavit filed before the Trial Court did clearly demonstrate that there was no existing Landlord and Tenancy Agreement between the parties herein.
 - iv) In the Appellant's view, the Tenancy Agreement which had been executed by the Appellant and the Respondent herein over the premises in issue had lapsed and no extension procured thereof.
 - v) As such, the directions of the Trial Court to undertake an Inspection on the suit property to establish whether there was a Landlord and Tenancy relationship between the Appellant and the Respondent was misdirected and amounted to a fishing expedition.
 - vi) The Appellant did further plead that if the Respondent was still in the premises in dispute, then such an occupation was illegal and unlawful and cannot be inferred to create an existing Landlord and Tenant relationship between the Appellant and the Respondent.
 - vii) In essence, the Appellant did state that the Trial Court did not have the jurisdiction to hear and determine any dispute between the Appellant and the Respondent as there was no Landlord and Tenancy relationship between the said parties therein.
 - viii) As such, the Trial Court Ruling pronounced on the 14.06.2024 was unlawful, illegal and without jurisdiction and should forthwith be set-aside and the Preliminary Objection dated 22.03.2024 upheld.
3. The Record of Appeal dated 07.11.2025 was duly filed before this Court and served on the Respondent herein.

4. The Respondent herein upon service of the Record of Appeal dated 07.11.2025 did express his intention to oppose the present Appeal.
5. The Record of Appeal was duly admitted on the 20.01.2026 and the Court did direct that the same be canvassed by way of written submissions.
6. Based on the above directions, the Appellant did file his submissions dated 30.01.2026 while the Respondent did file his submissions dated 10.12.2025.
7. In the present Appeal, this Court is required to exercise its appellate jurisdiction as guided by the case of **SELLE & ANOTHER-VERSUS- ASSOCIATED MOTOR BOAT CO. LIMITED & OTHERS (1968) EA 123** where the Court stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”

8. In other words, this Court is required to relook at the Preliminary Objection dated 22.03.2024, the submissions of the Applicant therein, the submissions of the Respondents therein and identify the issues for determination which should then be independently discussed and a determination made.
9. Thereafter, this Court is required to peruse the Trial Court Ruling and decide whether the Trial Court in arriving its Ruling

did consider the correct facts and applied the correct law in arriving its determination or not.

10. Based on the above perimeters, this Court will now proceed to relook at the merit and/or demerits of the Preliminary Objection dated 22.03.2024 and make its own determination first.

APPELLANT'S PRELIMINARY OJECTION DATED 22.03.2024.

11. The present Appeal is founded on the Appellant's Preliminary Objection dated 22.03.2024 filed before the Trial Court.
12. The Preliminary Objection dated 22.03.2024 filed by the Appellant before the Trial Court did raise an objection on the jurisdiction of the Trial Court in handling the proceeding filed before it by the Respondent.
13. The Appellant in his Preliminary Objection dated 22.03.2024 did seek the Trial Court to struck out whatever proceeding that had been instituted by the Respondent herein.
14. On the 08.04.2024, the Trial Court proceedings do confirm that the Preliminary Objection dated 22.03.2024 was duly served on the Respondent herein and parties did seek to canvass the same by way of written submissions.
15. However, the Trial Court did direct that a Ground Inspection of the premises in dispute be undertaken to establish whether the Tenant was still in occupation or not.
16. The Ground Inspection Record as ordered by the Trial Court was duly presented to the Court on the 09.05.2024 and thereafter, the Trial Court did retreat to write its Ruling on whether it had jurisdiction or not.

17. It is this Trial Court Ruling pronounced on the 14.06.2024 as regards the issue of Jurisdiction that is a subject of the present Appeal.
18. To be able to establish whether the Trial Court had jurisdiction to hear the dispute between the Appellant and the Respondent, it is inevitable to appreciate the origin of the dispute and what was actually filed before the Trial Court to create the dispute before the Trial Court.
19. According to the Record of Appeal, the principle document that is provided as the origin of the dispute between the parties herein is the Notice of Motion dated 28.07.2023.
20. However, in this Notice of Motion Application dated 28.07.2023, the Landlord (who is the Respondent in the present Appeal) did enclose a LANDLORD'S NOTICE TO TERMINATE THE TENANCY dated 28.04.2023.
21. The NOTICE TO TERMINATE THE TENANCY dated 28.04.2023 was issued under the provisions of Section 4 (2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.
22. The NOTICE TO TERMINATE THE TENANCY dated 28.04.2023 was received before the Trial Court on the 28.04.2023.
23. It is on the basis of this NOTICE TO TERMINATE THE TENANCY dated 28.04.2023 that the Respondent did file a Notice of Motion dated 27.07.2023 seeking to be allowed to levy distress for an outstanding amount of KShs.120,000/- pending the hearing of the Reference before the Trial Court.
24. Further to that, the Respondent sought for Orders that the Appellant be ordered to continue paying rent of KShs.20,000/- per month until the Reference before the Trial Court is determined.

25. The grounds adduced by the Respondent in support of the Notice of Motion dated 27.07.2023 were as follows; -

- i) Indeed, there was a Landlord and Tenant Agreement based on the Lease and Relinquish Agreement dated 15.09.2022.
- ii) However, the Respondent did issue a Notice to Terminate the Tenancy dated 28.04.2023 with effect from 01.07.2023.
- iii) Pending the lapse of the Notice to Terminate the Tenancy dated 28.04.2023, the Appellant herein was to clear all outstanding rent amounting to KShs.120,000/- thereof.
- iv) The Respondent therefore sought leave of the Trial Court to leave distress for this outstanding rent amounting to KShs.120,000/- as the Appellant's Reference was being heard and determined.

26. The Notice of Motion dated 28.04.2023 was duly opposed by the Tenant (who is the Appellant in the present Appeal) through a Replying Affidavit dated 17.07.2023.

27. In the Replying Affidavit dated 17.07.2023, the Appellant herein did advance the following facts in opposition to the Notice of Motion dated 28.04.2023; -

- a) The Appellant did admit to the existence of a Lease Agreement with the Respondent herein.
- b) The Appellant did further plead that he had complied with his obligations in the Lease Agreement with the Respondent an in particular payment of rent.
- c) The Appellant did state that the Rent payment was collected in cash by the Respondent but no receipts were

issued to him in acknowledgement of the said rent payments.

- d) However, in the month of June 2023, the Respondent herein did not go to collect the monthly rent as was the practice.
 - e) Thereafter, without any lawful and/or valid reason, the Respondent did serve the Appellant with a Notice of Termination of the Tenancy on the grounds of none payment of rent.
 - f) Upon service of the Notice of Termination of the Tenancy, the Appellant did request the Respondent to collect whatever rent that was outstanding but the Respondent was evasive and cruel to him.
 - g) In essence, the Appellant did submit that the Respondent was simply using the issue of outstanding rent to evict him from the suit property.
28. In response to the Appellant's Replying Affidavit dated 17.08.2023, the Respondent did file a Supplementary Affidavit dated 24.08.2023.
29. In the Supplementary Affidavit dated 24.08.2023, the Respondent did plead the following facts; -
- a) The Respondent did deny the allegation that the Appellant had been paying rent in line with the Lease Agreement.
 - b) The Respondent did state that at all times the Appellant would pay rent, a Receipt would be issued in his favour as contained in the annexures attached therein.
 - c) The Respondent did inform the Trial Court that since February 2023, the Appellant herein had failed to pay any

rent thereby resulting to KShs.60,000/- up to the date of issuance of the Notice to Terminate the Tenancy.

- d) The Respondent did plead that the Appellant was fully aware of his contacts as well as the offices of the Advocate and if he was serious in paying his rent, he would have done so.
 - e) The Respondent therefore did plead that the Appellant was simply not serious in payment of rent and leave to levy distress for rent should be allowed.
30. In an effort to ascertain whether a Landlord and Tenancy relationship exists between the Appellant and the Respondent, the Trial Court did direct an Inspection to be done.
31. Indeed, a Ground Inspection Report was presented before the Trial Court on the 09.05.2024.
32. The findings in the Ground Inspection Report was that the Appellant herein was still in occupation of the premises which he had Leased from the Respondent herein.
33. Having outlined all these facts above, the issues for determination in the present Appeal can now be summarised as follows; -

ISSUE NO.1-WAS THERE AN EXISTING LANDLORD-TENANCY RELATIONSHIP BETWEEN THE RESPONDENT AND APPELLANT HEREIN?

ISSUE NO.2-WAS THE TRIAL COURT COUCHED WITH THE RELEVANT JURISDICTION TO HEAR & DETERMINE THE DISPUTE BETWEEN THE RESPONDENT & THE APPELLANT?

ISSUE NO.3-WAS THE PRELIMINARY OBJECTION DATED 22.03.2024 MERITED OR NOT?

ISSUE NO.4- IS THE PRESENT APPEAL MERITED OR NOT?

ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT APPEAL?

34. The Court having duly identified the issues for determination as provided hereinabove, the same will not be discussed as provided below.

ISSUE NO.1-WAS THERE AN EXISTING LANDLORD-TENANCY RELATIONSHIP BETWEEN THE RESPONDENT AND APPELLANT HEREIN?

35. The first issue for determination is whether there is an existing Landlord and Tenancy relationship between the Appellant and the Respondent.

36. According to both the Appellant and the Respondent, there is a mutual agreement that there was a Lease and Relinquish Agreement dated 15.09.2022 executed over the portion of land measuring 0.08 Acres within the property known as ELDORET MUNICIPALITY BLOCK II/32.

37. According to the Lease and Relinquish Agreement dated 15.09.2022, the period of the Lease was One Year from 01.10.2022.

38. Based on this Lease and Relinquish Agreement dated 15.09.2022, the Tenancy would expire on the 01.10.2023.

39. Turning back to the LANDLORD'S NOTICE TO TERMINATE THE TENANCY dated 28.04.2023, it is clear that at the time of its issuance, the Lease and Relinquish Agreement dated 15.09.2022 was still binding between the Appellant and the Respondent.

40. This Court is therefore of the considered view and finding that there was a valid Landlord and Tenancy relationship between the Appellant and the Respondent herein between 01.10.2022 to 01.10.2023.

ISSUE NO.2-WAS THE TRIAL COURT COUCHED WITH THE RELEVANT JURISDICTION TO HEAR & DETERMINE THE DISPUTE BETWEEN THE RESPONDENT & THE APPELLANT?

41. The second issue for determination was whether the Trial Court did have the jurisdiction to deal with any dispute arising from the Landlord and Tenant relationship founded in the Lease and Relinquish Agreement dated 15.09.2022.

42. According to the Appellant as pleaded in the Preliminary Objection dated 22.03.2024, the Trial Court did not have any jurisdiction to hear and determine the Application dated 09.01.2024 as well as the entire proceeding before it.

43. On the face of the Preliminary Objection dated 22.03.2024, the Appellant did not outline any provision of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 that ousted the jurisdiction of the Trial Court.

44. However, in the Submissions dated 30.01.2026, the Appellant did submit that since the Lease and Relinquish Agreement dated 22.09.2022 had lapsed, the Trial Court did not have jurisdiction to hear the dispute between the Appellant and the Respondent herein.

45. The Respondent in response to the above argument did state that in view of the failure to renew and/or extend the Lease and Relinquish Agreement dated 22.09.2022, the Appellant's continued occupation was within the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, 301 based on the fact that there is no written Agreement beyond the 01.10.2023.

46. As such, the Appellant herein was a protected tenant within the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, 301 and therefore the Trial Court had the jurisdiction to handle the dispute before it.
47. The issue at hand is the nature of relationship between the Appellant and the Respondent herein after the expiry of the Lease and Relinquish Agreement dated 22.09.2022.
48. To begin with, it is clear from the pleadings of both the Appellant and the Respondent that the Lease and Relinquish Agreement dated 22.09.2022 no longer exists as a contract between them.
49. In other words, there is no written Agreement of Lease between the Appellant and the Respondent over the portion measuring 0.08 acres on the property known as LR.NO.ELDORET MUNICIPALITY BLOCK II/32.
50. According to the Inspection Report filed before the Trial Court on the 09.05.2024, it was confirmed that the Appellant herein was still in occupation and use of the 0.08 acres within the property known as LR.NO.ELDORET MUNICIPALITY BLOCK II/32.
51. The Inspection Report filed before the Trial Court did identify the business being undertaken by the Respondent on the portion measuring 0.08 acres within the property known as LR.NO.ELDORET MUNICIPALITY BLOCK II/32 to be Club known as CLUB GESTURES.
52. Upon filing of the Ground Inspection Report on the 09.05.2024, the Appellant herein did not object and/or challenge the outcome of the same.

53. In other words, the findings contained in the Ground Inspection Report filed on the 09.05.2024 before the Trial Court that the Appellant was still in occupation of the portion measuring 0.08 acres on the property known as LR.NO.ELDORET MUNICIPLAITY BLOCK II/32 in which he is running a club known as CLUB GESTURES is not contested.
54. The preamble to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, 301 states as follows; -

“An act of parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”

55. The provisions of Section 2 (1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, 301 provides as follows; -

“a catering establishment” means any premises on which is carried out the business of supplying food and drinks for consumption on such premises, by persons other than those who reside and are boarded on such premises”

56. The description of a Controlled Tenancy is provided in the following manner; -

“Means a tenancy of a shop, hotel or catering establishment; -

a) Which has not been reduced into writing; or

b) Which has been reduced into writing and which-

(i) Is for a period not exceeding five years; -

(ii) Contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or

(iii) Relates to premises of a class specified under subsection (2) of this section.

57. The Court having established the perimeters of a controlled Tenancy under the law, then what would be the existing relationship between the Appellant and the Tenant over the portion measuring 0.08 acres on the property known as LR.NO.ELDORET MUNICIPALITY BLOCK II/32?
58. As earlier stated, the relationship between the Appellant and the Respondent was premised on the Lease and Relinquish Agreement dated 22.09.2022.
59. It is also confirmed that the Lease and Relinquish Agreement dated 22.09.2022 has since lapsed on the 01.10.2023.
60. As such, there is no Agreement of Lease in place between the Appellant and the Respondent.
61. The Ground Inspection Report filed before the Trial Court on the 09.05.2024 did confirm that the Appellant was still in occupation of the 0.08 acres within the property known as LR.NO.ELDORET MUNICIPALITY BLOCK II/32 wherein he operates a Club known as CLUB GESTURES.
62. It is therefore clear that the occupation by the Appellant on the 0.08 Acres within LR.NO.ELDORET MUNICIPALITY BLOCK II/32 has not be reduced into writing after the 01.10.2023.
63. Based on this finding, this Court is of the considered view and finding that the Appellant herein is a controlled tenant as provided under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301.

64. Any matter or dispute between the Appellant and the Respondent must be therefore referred to the Trial Court as provided under Section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301.
65. In essence, this Court is of the considered view and finding that the Trial Court had the jurisdiction to hear and determine the Application dated 19.01.2024.

ISSUE NO.3-WAS THE PRELIMINARY OBJECTION DATED 22.03.2024 MERITED OR NOT?

66. Based on the finding in Issue No.2 hereinabove, the Court is of the finding that the Preliminary objection dated 22.03.2022 was not merited and should be dismissed.

ISSUE NO.4- IS THE PRESENT APPEAL MERITED OR NOT?

67. Based on the finding in Issue No. 3 hereinabove, this Appeal is not merited and is hereby dismissed.
68. However, it is important to point out that the Trial Court did rely on the Ground Inspection Report filed before it on the 09.05.2024 as the sole reason that there exists a Landlord and Tenancy relationship between the Appellant and the Respondent.
69. Nevertheless, this Court is of the view that the Ground Inspection Report filed before the Trial Court on the 09.05.2024 was simply to confirm whether the Appellant was in occupation of the 0.08 acres within the property known as LR.NO.ELDORET MUNICIPALITY BLOCK II/32 and the nature of the business being undertaken.
70. The main determination of whether the Appellant and Respondent were in a controlled tenancy is to be determined

by provisions of Section 2 (1) (a) and (b) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301.

ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT APPEAL?

71. Costs are usually awarded to a winning party.
72. In the present Appeal, the Appellant's Appeal is not merited and the Respondent is entitled to costs of the same.

CONCLUSION

73. In conclusion, the Court hereby makes the following Orders in determination of the present Appeal; -

- A. THE MEMORANDUM OF APPEAL DATED 26.06.2024 IS NOT MERITED AND THEREFORE DISMISSED FORTHWITH.**
- B. THE APPELLANT IS CONDEMNED TO PAY COSTS OF THE APPEAL TO THE RESPONDENT HEREIN.**

DATED, SIGNED and DELIVERED in ELDORET this 7TH DAY OF MAY ,2026.

EMMANUEL.M. WASHE
JUDGE

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Appellant: Ms. Shejero for the Appellant

Counsel for the Respondent: Mr. Momanyi for the Respondent