



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC CASE NO. E336 OF 2025

ELIZABETH WANJIKU MBUGUA.....
PLAINTIFF

=VERSUS=

JOJEMI CHEMICALS LIMITED.....
DEFENDANT

RULING

1. This ruling is in respect to the Notice of Preliminary Objection dated 25th July 2025, in which the Defendant contends that this Court lacks original jurisdiction to hear and determine the suit. The Defendant contends that the jurisdiction to hear this matter is vested in the Business Premises Rent Tribunal under Sections 2 and 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act. Accordingly, the Defendant urged the Court to dismiss the suit with costs.

THE PLAINTIFF'S CASE

2. The Plaintiff opposed the Preliminary Objection through Grounds of Opposition dated 11th August 2025. She argued that this Court has jurisdiction to hear and determine the suit

since the tenancy in question falls outside the scope of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, as the rent payable exceeds the statutory threshold of Kshs. 100,000/- and the lease is for a fixed term of five years and three months, thereby not constituting a controlled tenancy. Consequently, she asserted that the Business Premises Rent Tribunal lacks jurisdiction over the dispute.

3. She further contended that reliance on Sections 2 and 12 of the Act is misplaced, as those provisions do not apply to the current tenancy arrangement.
4. She argued that the issues raised in the objection are factual and require evidentiary examination, which cannot be resolved in a preliminary objection. In light of the foregoing, the Plaintiff contended that the Preliminary Objection is premature, unfounded, and intended to delay the proceedings.
5. The preliminary objection was canvassed by way of written submissions.

THE DEFENDANT'S SUBMISSIONS

6. The Defendant filed its submissions dated 6th November 2025.
7. On behalf of the Defendant, Counsel submitted that the preliminary objection is merited as it challenges the Court's jurisdiction to hear and determine this matter. Counsel contended that the dispute arises from a controlled tenancy

- as defined in the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, and therefore falls within the exclusive jurisdiction of the Business Premises Rent Tribunal.
8. Counsel asserted that no valid, enforceable written lease exists between the parties because the lease documents dated 11th July 2025 and 29th September 2025 are merely drafts, unexecuted, unattested, and do not comply with the mandatory requirements of Section 54(5) of the Land Act, Section 45(1) of the Land Registration Act, and Section 37 of the Companies Act. Counsel maintained that these documents are legally inoperative and incapable of conferring any fixed-term tenancy.
 9. Counsel further submitted that without a valid written lease, the tenancy defaults to a periodic tenancy under Section 57 of the Land Act, thereby falling within the statutory definition of a controlled tenancy. Counsel asserted that the Defendant is therefore a protected tenant under Section 4 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, and any dispute related thereto must be determined by the Business Premises Rent Tribunal.
 10. Counsel emphasized that jurisdiction is conferred by statute and cannot be assumed where it does not exist. Counsel maintained that any proceedings commenced without jurisdiction are null and void. It was argued that the Plaintiff prematurely approached this Court while lease negotiations were still ongoing and unresolved, thereby rendering the suit both premature and improperly instituted.

11. In light of the foregoing, Counsel submitted that this Court lacks jurisdiction to hear and determine this suit.
12. In conclusion, Counsel urged the Court to dismiss the suit with costs.

THE PLAINTIFF'S SUBMISSIONS

13. The Plaintiff filed her submissions dated 7th January 2026
14. On behalf of the Plaintiff, Counsel submitted that the Preliminary Objection lacks merit as it does not raise a pure point of law capable of disposing of the suit. Counsel relied on **Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696, Oraro v Mbaja [2007] KLR 141, and Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others [2014] eKLR**, to submit that a preliminary objection must be based on uncontested facts and cannot be sustained where factual disputes require evidentiary interrogation.
15. Counsel submitted that the issue of whether the tenancy between the parties qualifies as a controlled tenancy under Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is a disputed factual issue. Counsel argued that the Plaintiff maintains there is a valid lease agreement for a term exceeding five years, which would exclude the tenancy from the statutory definition of a controlled tenancy, while the Defendant disputes the existence and validity of such an agreement.

16. Counsel argued that this dispute cannot be resolved at the preliminary stage, but requires an examination of evidence to determine the nature and terms of the tenancy. Consequently, the issue falls outside the scope of a preliminary objection.
17. Counsel further submitted that the tenancy does not qualify as a controlled tenancy under Section 2 of the Act, and therefore falls outside the jurisdiction of the Business Premises Rent Tribunal.
18. In conclusion, Counsel urged the Court to find that the Preliminary Objection is without merit, dismiss it with costs, and allow the matter to proceed to full hearing.

ANALYSIS AND DETERMINATION

19. Having considered the preliminary objection, the grounds of opposition and the rival submissions, the issue for determination is whether the preliminary objection is merited.
20. The law on preliminary objections is well settled. A preliminary objection must be based on a pure point of law. In **Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd [1969] EA 696**, Law JA stated as follows:

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a

preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

21. Further on, **Sir Charles Newbold JA** stated;

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

22. The principle was restated in **Oraro v Mbaja (2005) eKLR**, where Ojwang J (as he then was) described it as follows:

“I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be

a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

23. The preliminary objection is based on the grounds that this court lacks jurisdiction to hear and determine the suit. The Defendant contends that the dispute concerns a controlled tenancy governed by the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, thereby conferring jurisdiction on the Business Premises Rent Tribunal. Accordingly, the Defendant urged the Court to put down its tools and dismiss the case.
24. The Plaintiff argued that the tenancy in question is not a controlled tenancy because it is for a fixed term exceeding five years. She further contended that whether a valid lease exists and the terms of that lease are factual matters that cannot be properly determined at this stage by a preliminary objection.
25. It is trite that jurisdiction is everything, and without it, the Court cannot proceed. In **Owners of Motor Vessel ‘Lillian**

S' vs Caltex Oil (Kenya) Limited (1989) eKLR, the Court held 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...”

26. Similarly, in **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR**, the Supreme Court held 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.”

27. The jurisdiction of the Business Premises Rent Tribunal is statutory. The Tribunal can only hear disputes that fall within the scope of the **Landlord and Tenant (Shops, Hotels and Catering Establishments) Act**.

28. In **Republic v Business Premises Rent Tribunal & another Ex Parte Albert Kigera Karume [2015] eKLR**, the Court, citing **Re Hebtulla Properties Ltd [1979] KLR 96**, held that the Tribunal is a creature of statute whose jurisdiction is limited to matters relating to controlled tenancies.

29. **Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act** defines a controlled tenancy as: -

a) A tenancy of a shop, hotel or catering establishment-

b) Which has not been reduced into writing; or

c) Which has been reduced into writing and which-

i. Is for a period not exceeding five years; or

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.

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

30. Consequently, for the Defendant's objection to be upheld, the Court must be convinced, based on uncontested facts, that the tenancy between the parties qualifies as a controlled tenancy. The Defendant contends that the alleged lease documents were merely drafts, unexecuted,

unattested, and legally unenforceable. Conversely, the Plaintiff maintains that there is a valid fixed-term lease exceeding five years, and therefore, the tenancy falls outside the statutory definition of a controlled tenancy.

31. These are contentious issues that cannot be resolved without examining evidence. The Court would be required to examine the lease documents, the parties' conduct, the circumstances under which possession was given or taken, the payment of rent, correspondence between the parties, and the legal effect of the alleged lease documents. These are factual and evidentiary issues relating to the existence, validity and terms of the alleged tenancy that cannot be definitively determined at the preliminary stage.
32. Based on the foregoing, this Court finds that the Preliminary Objection dated 25th July 2025 is without merit, and it is hereby dismissed with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF MAY 2026.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF:

Marienga for the Defendant

Kadenge for the Plaintiff

Ahmed - Court assistant

ORIGINAL