



Villa Greens Limited v Creekview Limited (Environment and Land Appeal E082 of 2022) [2025] KEELC 5929 (KLR) (15 August 2025) (Judgment)

Neutral citation: [2025] KEELC 5929 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E082 OF 2022
CG MBOGO, J
AUGUST 15, 2025**

BETWEEN

VILLA GREENS LIMITED APPELLANT

AND

CREEKVIEW LIMITED RESPONDENT

(Being an appeal from the judgment of the Honourable Gakubi Chege delivered on 26th August, 2022 in BPRT Case No. 654 of 2019)

JUDGMENT

1. Being dissatisfied with the ruling of the Hon. Gakubi Chege delivered on 26th August, 2022, the appellant filed the amended memorandum of appeal dated 5th March, 2024 challenging the said ruling on the following grounds:-
 1. That the Hon. Tribunal erred in law and fact as it had no jurisdiction to handle the reference noting that the property in issue was not a shop, a hotel or a catering establishment.
 2. That the Hon. Tribunal erred in law and fact as it had no jurisdiction to handle the matter because it was not a controlled tenancy as the lease agreement clearly indicated that it was for a period of more than 5 years.
 3. That the Hon. Tribunal erred in law and fact as it had no jurisdiction to handle the matter because it was not a controlled tenancy as the lease agreement provided other ways of termination of contract other than breach of contract.
 4. That the Hon. Tribunal erred in law and fact by failing to find that the appellant ceased being a tenant when electricity was disconnected and the office space ransacked by the landlord in June 2019.



5. That the Hon. Tribunal misdirected itself in arriving at the conclusion that a landlord tenant relationship existed between the appellant and the respondents when the same had been extinguished by the action of the respondent in June 2019.
6. That the Hon. Tribunal misdirected itself by making a finding that the appellant and the respondent had a controlled tenancy when the lease agreement clearly indicated that the subject of the lease was an office space and not a shop, hotel or a catering establishment.
7. That the Hon. Tribunal misdirected itself by making a finding that the appellant and the respondent had a controlled tenancy when the lease agreement was for more than five years and it had provisions for breach other than breach of contract.
8. That the Hon. Tribunal erred in law and fact as it had no jurisdiction directing itself in the issues of the Estate Agency Act.
9. That the Hon. Tribunal erred in law and fact by acting way beyond its jurisdiction by dealing with the issue of estate commission and issue of the estate Agency Act.
10. That the Hon. Tribunal erred in law and fact by failing to find that the landlord illegally broke into the premises that was in and took goods worth Kshs. 3,000,000/-.
11. That the Hon. Tribunal erred in law and fact by failing to find that the appellant is a body corporate and thus governed by the Estate Agent Act.
12. That the learned trial magistrate erred in fact and law in making a determination as follows:-
 - a. That the landlords notice to terminate tenancy dated 3rd October 2019 subject matter of Nairobi BPRT No. 234 of 2020 is hereby upheld and the tenant's tenancy in respect of Ruaka Square Building room 301, 3rd floor, Kiambu County is hereby terminated.
 - b. That the tenant shall forthwith vacate the suit premises and in default shall be forcibly evicted therefrom by the OCS within whose jurisdiction the premises are situated.
 - c. That the tenant is liable to pay rent arrears owing to the Landlord up to and including the date of such vacation or eviction.
 - d. The landlord is at liberty to use all lawful means to recover rent arrears against the tenant.
 - e. The tenant is disentitled to offset the rent arrears owing to the Landlord in respect of the suit premises against the alleged agency commission as the claim is illegal under Section 18 of the Estate Agent Act, Cap 533, Laws of Kenya.
 - f. That tenant shall pay exemplary costs of Kshs. 100,000/- to the Landlord in the consolidated case all inclusive.

In doing so, the trial court ignored the following: -

- a. That the appellant ceased from being a tenant when its electricity was disconnected and its premises ransacked.
- b. That as per the judgment the appellant will always be a tenant as long as the landlord wanted.



- c. That as long as the Landlord doesn't evict the appellant he will still be a tenant notwithstanding the fact that he is not in the premises nor is he conducting his business there.
 - d. That it didn't have jurisdiction in dealing with the issues of the Estate Agency Act and in the premises, which is not a shop, hotel nor a catering establishment.
 - e. That the appellant will suffer double jeopardy because its items were illegally sold and the Hon. Tribunal awarded punitive extemporal damages against the appellant.
 - f. That the tenant has been frustrated by the Landlord and he has not been able to operate his business in the premises over since June 2019.
 - g. That it had no jurisdiction to determine the matter because it was not a controlled tenancy as the lease agreement clearly indicated that it was for a period of more than 5 years.
 - h. That it had no jurisdiction to determine the matter because it was not a controlled tenancy as the lease agreement provided other ways of termination of contract other than breach of contract.
2. The appeal was canvassed by way of written submissions. The appellant filed its written submissions dated 9th June, 2025 where it raised three issues for determination as listed below: -
- I. Whether the honourable tribunal had jurisdiction to handle the matter.
 - II. Whether by disconnecting electricity to the premises the respondent had constructively terminated the tenancy.
 - III. Whether the tribunal had jurisdiction to determine the issues related to Estate Agency Act.
3. The respondent filed its written submissions dated 20th June, 2025. In both submissions, the parties strongly argued their positions as regards the subject matter. I have carefully perused the grounds of appeal, the record of appeal and the written submissions filed by the parties. However, there is a fundamental error on the form of the amended memorandum of appeal, that touches on the jurisdiction of this court.
4. In my view, the jurisdiction of this court has not been moved accordingly and fully. It is not known the extent to which the court is required to administer justice. In this case, there is no prayer (s) sought in the amended appeal, and this court cannot assume the intention of the appellant. As such, this court is constrained to proceed and determine the issues before it, and the only option is to strike out the appeal. Perhaps that way, the appellant may decide to properly move the court. Unfortunately, Article 159 (2) (d) of *the Constitution* cannot be invoked even on the court's own volition owing to such fundamental error/omission.
5. The amended memorandum of appeal dated 5th March, 2025 is hereby struck out. I make no orders as to costs. It is so ordered.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 15th DAY OF AUGUST, 2025.

HON. MBOGO C.G.



JUDGE

15/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Ng'ang'a for the Respondent

No appearance for the Appellant

