



Ogembo v Eco Sea Products Limited (Environment and Land Appeal E142 of 2024) [2024] KEELC 14034 (KLR) (16 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14034 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E142 OF 2024**

**JO MBOYA, J
DECEMBER 16, 2024**

BETWEEN

LORNA ADHIAMBO OGEMBO APPELLANT

AND

ECO SEA PRODUCTS LIMITED RESPONDENT

(Being an appeal against the Ruling and/or Order of Hon. James Ndegwa and Hon. Joyce Murigi sitting at the Business Premises Rent Tribunal at Nairobi in BPRT Case No. E784 of 2024 on 18th September 2024)

JUDGMENT

Introduction And Background

1. The Appellant herein is the registered proprietor of House number 72 situate on L.R No. Nairobi/Block 91/72 [hereinafter referred to as the suit property]. The suit property was leased/demised to the Respondent herein at the foot of the Lease Agreement entered into and executed on the 13th April 2023.
2. Suffice it to point out that the Respondent entered upon and took possession of the suit property and thereafter commenced to carry out business thereof. Nevertheless, there appears to have arisen default on behalf of the Respondent as pertains to payment of the rents which were agreed to be paid quarterly in advance. To this end, the Appellant proceeded to and instructed a nominated auctioneer to levy distress as against the Respondent.
3. Other than the foregoing, the Appellant herein also issued a Termination Notice seeking to terminate the tenancy [sic] in accordance with the provisions of clause 8 of the Lease/Tenancy agreement.
4. Arising from the instructions to the nominated auctioneer to levy distress and to re-enter the demised premises in pursuance to the provisions of clause 8 of the Tenancy Agreement, the Respondent herein



lodged a Complaint vide Reference dated the 24th July 2024 seeking to challenge the actions by the Appellant. Furthermore, the Respondent also filed an application dated the 24th July 2024 and wherein same [Respondent] sought for inter-alia; orders of temporary injunction to restrain the Appellant from evicting the Respondent or otherwise interfering with the Respondent's quiet possession and enjoyment of the suit property.

5. Following the filing of the Reference and the Application for temporary injunction, the Business Premises Rent Tribunal proceeded to and issued orders of interim injunction. Thereafter the tribunal set down the Application under reference for inter-partes Hearing.
6. Upon being served with the Reference and the Application seeking for temporary injunction, the Appellant herein filed a Notice of Preliminary Objection dated the 31st July 2024 and in respect of which the Appellant contended that the Business Premises Rent Tribunal [hereinafter referred to as the tribunal] was divested of the requisite jurisdiction to entertain the dispute beforehand.
7. Despite the filing of the Notice of Preliminary Objection, the tribunal proceeded to and engaged with the matter. In particular, on the 18th September 2024, the tribunal issued further orders including an order allowing the Respondent to re-enter the suit property. Besides, the tribunal directed that the Preliminary Objection shall be heard alongside the Application.
8. Arising from the orders issued by the tribunal on the 18th September 2024, the Appellant herein felt aggrieved and dissatisfied. In this regard, the Appellant proceeded to and filed a Memorandum of Appeal dated the 23rd September 2024. Furthermore, the Memorandum of Appeal was amended on the 23rd October 2024.
9. Vide the amended Memorandum of Appeal, the Appellant has enumerated the following Grounds:
 - i. The learned Honourable Members of the Tribunal erred in both in law and fact when despite the Appellant raising a Preliminary Objection on jurisdiction that the Lease Agreement entered into between the Appellant and the Respondent was for a period of 10 years and 3 months and as such the Business Premises Tribunal lacks the jurisdiction and offends the mandatory provisions of Section 2(1)(b) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya to hear and determine or entertain the matter, the Learned Honourable Members still proceeded to entertain the matter and to make draconian orders that are injunctive in nature.
 - ii. The learned Honourable Members of the Tribunal erred both in law and fact when Notice of Termination of Lease dated 11th April 2024, which period of notice officially lapsed on 11th July 2024, as such the contractual obligations that formerly existed between the Appellant and Respondent had been terminated and there were no contractual obligations to be enforced by the Honourable Tribunal.
 - iii. The learned Honourable Members of the Tribunal erred both in law and fact when despite the Appellants raising a second Preliminary Objection dated 10th September 2024 that the Appellant had re-entered the premises and had occupied it for over ten (10) days and taken over possession of the premises thereby ousting the Tribunal's jurisdiction, the Honourable Tribunal still made an injunctive Order in nature without first determining whether it had the jurisdiction under the law to determine that the Respondent had a right to re-occupy/re-enter the premises, as such unlawfully issuing an extension to the Respondent's stay in the Appellant's premises without any contract foundation in law.



- iv. The learned Honourable Members of the Tribunal erred both in law and fact when they failed to note and make a finding that the Business Premises Rent Tribunal has no jurisdiction whatsoever to issue an injunction or a similar remedy for or against a party.
 - v. The learned Honourable Members of the Tribunal erred both in law and fact when they failed to note and make a finding that the Tribunal is not seized with the jurisdiction to entertain or deal with a matter where a Tenant has been evicted and/or the landlord has re-taken possession of the premises or even where a tenant is faced with a threat of eviction.
 - vi. The learned Honourable Members of the Tribunal erred both in law and fact when they failed to consider the balance of convenience and the effect the orders will have on the Appellant while making the draconian orders in a matter where they had no jurisdiction in law.
 - vii. The learned Honourable Members of the Tribunal erred both in law and fact when they did not properly direct their mind to the peculiar circumstances of the case, acted in haste and thereby failed to exercise their judicial discretion properly, fairly and in the interest of substantive justice for all parties.
10. The instant Appeal came up for Directions on the 7th November 2024, and whereupon the advocates for the respective parties covenanted to canvass and dispose of the Appeal by way of written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
 11. The Appellant filed written submissions dated the 20th November 2024 whereas the Respondent filed written submissions dated the 29th November 2024. The two [2] sets of written submissions form part of the record of the court.

Parties' Submissions

A. Appellant's Submissions:

12. The Appellant filed written submissions dated the 20th November 2024 and wherein the Appellant has raised and canvassed two [2] salient issues for consideration and determination by the court.
13. Firstly, the Appellant herein has submitted that the Lease/Tenancy agreement which was entered into and executed by the parties on the 13th April 2023 was for a term of 10 years and 3 months. In this regard, it was submitted that the Lease under reference was therefore outside the purview of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya.
14. Additionally, learned counsel for the Appellant has submitted that the Lease under reference also contained a provision wherein the Appellant [Landlady] was at liberty to terminate the tenancy in the event of breach of the terms of the Lease Agreement and thereafter to re-enter the demised premises. In this regard, learned counsel for the Appellant cited and referenced Clause 8 of the Lease Agreement.
15. Arising from the fact that the Lease Agreement was for a duration of 10 years and 3 months; and coupled with the fact that the lease agreement contained a clause for termination for breach of contract, it was submitted that the lease under reference did not create a controlled tenancy in accordance with the provisions of Section 2 of Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya.
16. Other than the foregoing, learned counsel for the Appellant has submitted that the Appellant and the Respondent entered into and executed the lease agreement at arms-length. To this end, it was



- contended that both the Appellant and the Respondent are therefore bound by the terms of the contract.
17. In a nutshell, learned counsel for the Appellant has submitted that the lease under reference fell outside the purview of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya and hence the tribunal is not seized of the requisite jurisdiction to entertain and adjudicate upon the dispute mounted by the Respondent.
 18. To buttress the submissions that the Lease Agreement did not constitute a controlled tenancy, learned counsel for the Appellant has cited and referenced various decisions including the case of S S Malonza Advocates LLP v David Githinga BPRT Case No. E920 of 2023; National Bank of Kenya Ltd v Pipeplastic Samkolite Litd & Another [2001]eKLR and Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd [2017]eKLR.
 19. Secondly, learned counsel for the Appellant has submitted that the tribunal was devoid and divested of jurisdiction to issue and grant an order of interim injunction in favour of the Respondent herein. In this regard, it has been contended that the orders of interim injunction that were issued by the tribunal on the 25th July 2024, were therefore illegal, unlawful and void for all intents and purposes.
 20. Furthermore, learned counsel for the Appellant has also submitted that the tribunal was also divested of the requisite jurisdiction to grant an order to and in favour of the Respondent to re-enter the suit property long after the Respondent had been evicted. In particular, it was contended that upon the Appellant exercising her right of re-entry, the tenancy/lease agreement between the Appellant and the Respondent ceased to exist.
 21. Flowing from the foregoing, learned counsel for the Appellant has therefore contended that the orders of the tribunal which were issued on the 18th September 2024 and which effectively amounted to orders of mandatory injunction, were issued without the requisite jurisdiction.
 22. At any rate, learned counsel for the Appellant has submitted that the orders of injunction which are equitable remedy/reliefs fall outside the mandate and jurisdiction of the tribunal. In particular, it was contended that the orders of injunction [whether temporary or mandatory] can only be issued by a court of law and not the tribunal.
 23. To vindicate the foregoing submissions, learned counsel for the Appellant has cited and referenced various decisions inter-alia Narshidas & Co Ltd v Nyali Air Conditioning & Refrigerators Services Ltd [1996]eKLR; Republic v Nairobi Business Premises Rent Tribunal Ex-parte Karasha [1979]KLR 147 and Republic v Business Premises Rent Tribunal; Ama Industries Ltd (Exparte Applicant); Nairobi Transformer manufacturers (EA) Co Ltd (Interested Party) (Environment and Land Judicial Review Case E005 of 2023) [2023] KEELC 16647 (KLR) (23 March 2023) (Judgment), respectively.
 24. Arising from the foregoing submissions, learned counsel for the Appellant has therefore implored the court to find and hold that the Appeal beforehand is meritorious. In this regard, learned counsel for the Appellant has invited the court to allow the Appeal and vacate the orders that were issued by the tribunal.

B. Respondents' Submissions:

25. The Respondent filed written submissions dated the 29th November 2024 and in respect of which the Respondent has adverted to and highlighted one issue. Instructively, the Respondent has contended that the tribunal was seized of the requisite jurisdiction to entertain the Reference and the Application for injunction.



26. Learned counsel for the Respondent has submitted that though the Lease Agreement which was entered into and executed by the parties was for a duration of 10 years and 3 months, the said Lease Agreement contained a clause which touched on termination of the lease before expiry of 5 years. In this regard, learned counsel for the Respondent has cited and referenced Clause 11 of the Lease Agreement.
27. According to learned counsel for the Respondent, the tenancy/lease agreement which was entered into constituted a controlled tenancy in accordance with the provisions of Section 2 Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya.
28. To this end, learned counsel for the Respondent has therefore invited the court to find and hold that the tribunal was therefore seized and possessed of the requisite jurisdiction to entertain and adjudicate upon the Reference and the attendant application filed on behalf of the Respondent.
29. Additionally, learned counsel for the Respondent has also submitted that the tribunal was seized of the requisite jurisdiction to grant the orders of temporary injunction as well as the orders of re-entry into the suit premises. Pertinently, learned counsel for the Respondent has invited the court to find and hold that the tribunal is seized of the mandate to grant order of temporary and mandatory injunctions, respectively.
30. Flowing from the foregoing submissions, learned counsel for the Respondent has therefore invited the court to find and hold that the Preliminary Objection that was raised by the Appellant was misconceived. In particular, learned counsel for the Respondent has implored the court to find and hold that the tribunal was seized of the requisite jurisdiction to entertain the dispute beforehand.

Issues For Determination

31. Having reviewed the Record of Appeal; the Proceedings before the tribunal; the Orders made by the tribunal and upon consideration of the written submissions filed on behalf of the respective parties, the following issues crystalize [emerge] and are thus worthy of determination:
 - i. Whether the Lease/Tenancy agreement dated the 13th April 2023 was a Controlled Tenancy or otherwise.
 - ii. Whether the Tribunal was seized of the requisite jurisdiction to entertain the dispute arising out of the impugned Lease Agreement and by extension to issue the orders of injunction.

Analysis And Determination

Issue Number 1 Whether the Lease/Tenancy agreement dated the 13th April 2023 was a Controlled Tenancy or otherwise.

32. The Appellant and the Respondent entered into and executed a Lease Agreement dated the 13th April 2023. The Lease Agreement under reference was for a duration of 10 years and 3 months. Furthermore, the Lease Agreement contained a Clause which allowed the Appellant [landlady] to re-enter the suit premises in the event of breach or non-performance of the terms of the lease agreement by the Respondent.
33. Additionally, the Lease Agreement under reference also adverted to a Clause wherein the re-entry of the lease property by the Appellant [landlady] would thus terminate the tenancy.
34. For ease of appreciation, it is imperative to reproduce Clause 8 of the Lease Agreement under reference. Same is reproduced as hereunder:



8. If the said monthly rent hereby reserved or any payment due hereunder by the Lessee or any part thereof shall be in arrears and unpaid for the space of Twenty One (21) days after any of the days whereon the same ought to be paid as aforesaid and whether the same shall have been legally demanded or not or if there shall be any breach or non-performance or non-observance by the Lessee of any of the covenants and conditions herein before contained and on the part of any of the covenants and contained and on the part of the Lessee to be performed and observed shall commit any act of bankruptcy or be adjudged bankrupt and/or insolvent or enter into any agreement or make any arrangement with or for the benefit of its creditors for liquidation of its debts by composition or otherwise or being an association shall enter into dissolution or if a receiver shall be appointed on its undertaking then and in any such case it shall and may be lawful for the Lessors at any time thereafter to re-enter into and upon the leased premises or any part thereof in the name of the whole and the same to have again repossess and enjoy as in its former estate anything herein contained to the contrary in anywise notwithstanding but without prejudice to any right or action or remedy of the Lessor in respect of any antecedent breach of any of the covenants by the Lessee hereinbefore contained.
35. The provisions of Clause 8 of the Lease Agreement, which have been referenced in the preceding paragraph, allowed the Appellant to re-enter the demised premises in the event of breach of the terms of the contract and/or non-performance of the covenants/conditions contained in the body of the Lease Agreement.
36. Arising from the contents of Clause 8 of the Agreement, it is therefore crystal clear that the moment the Respondent breached the terms of the contract, the Appellant was at liberty to terminate the tenancy and to re-enter thereon.
37. To my mind, the Appellant and the Respondent negotiated and thereafter entered into the Lease Agreement at arms-length. In this regard, it must be taken that both the Appellant and the Respondent were keen to be bound by the terms of the Lease Agreement/Contract. Having entered into and executed the terms of the Lease Agreement under reference, the Respondent herein is thus bound by the terms thereof.
38. At any rate, it is not lost on this court that once the parties have entered into and executed an agreement/contract, the court cannot alter and/or re-write the terms of the contract. To the contrary, it is the obligation of the court to respect the intentions of the parties as evinced in the contract. Furthermore, where the courts are called upon to interpret the terms of the contract, the court is obligated to interpret same without subverting the clear intentions of the parties. Instructively, the courts are called upon to interpret the agreements within the contract. [See section 97 of the *Evidence Act*, Chapter 80, Laws of Kenya].
39. Additionally, it is imperative to cite and reference the decision of the Court of Appeal in the case of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR, where the court stated and held thus:

A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.

As was stated by Shah JA in the case of *Fina Bank Limited vs Spares & Industries Limited (Civil Appeal No 51 of 2000)* (unreported):



“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain”.

40. The foregoing position was re-affirmed by the Court of Appeal in the case of Centurion Engineers & Builders Limited v Kenya Bureau of Standards (Civil Appeal E398 of 2021) [2023] KECA 1289 (KLR) (27 October 2023) (Judgment), where the court stated as hereunder:
 22. As this Court has severally stated, and now a longstanding principle of law, that parties to contract are bound by the terms and conditions thereof, and that it is not the business of courts to rewrite such contracts. In National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Ltd [2002] 2 EA 503 [2011] eKLR at 507, this Court stated: “A court of law cannot rewrite a contract between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded or proved.” See also Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR.
 23. In the House of Lord’s decision in Brogden v Metropolitan Rly Co [1876-77] LR 2 APP CAS 66, Lord Blackburn held as follows: “I have always believed the law to be this, that when an offer is made to another party and in that offer, there is a request express or implied that he must signify his acceptance by doing some particular thing, then as soon as he does that thing, he is bound.”
41. Other than the inclusion of Clause 8 in the Lease Agreement [which essentially takes the agreement outside the purview of Section 2 of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya], the parties herein also agreed on the lifespan of the Lease. Notably, the parties agreed that the Lease shall be for a duration of 10 years and 3 months and not otherwise.
42. Suffice it to underscore that at the time when the parties herein commenced negotiations and thereafter entered into the Lease Agreement, same [parties] were alive to and aware of the provisions of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya. Nevertheless, the parties out of own volition chose to contract outside the purview of the Act.
43. To my mind, having chosen the lifespan [duration of the lease agreement] and which term placed the agreement outside the provisions of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya, the Respondent herein cannot now be heard to contend that the tenancy was a controlled tenancy.
44. For the umpteenth time, it suffices to underscore that parties are bound by the terms of the agreement/ contract entered into and executed by themselves. In addition, it is not the duty of the court to release a party from the shackle of any bad bargain freely entered into.
45. On the other hand, it is also imperative to point out that what constitutes a Controlled Tenancy is well defined vide Section 2 of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya.
46. For ease of appreciation, Section 2 of the Act [supra] is reproduced as hereunder:

“controlled tenancy” 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; 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;

47. Yet again, it is my finding and holding that to the extent that the Lease Agreement/Tenancy contained a provision for termination for breach of covenant, the existence of such clause, whereby the landlord/landlady would be at liberty to terminate the contract on the basis of breach of covenant, takes the tenancy outside the purview of the tribunal.
48. To vindicate the foregoing exposition of the law, I beg to adopt and endorse the holding of the Tribunal in the case of *SS Malonza Advocates LLP v Githinga* (Tribunal Case E917 & E920 of 2023 (Consolidated)) [2024] KEBPRT 335 (KLR) (14 January 2024) (Ruling), where the Tribunal stated thus:
24. The lease agreement filed by both parties' states that the lease term is for a period of 5 years and 3 months which exceeds the 5-year period provided for in section 2 of The Act.
25. The tenancy agreement also provides for a termination clause which reads as follows:
'Breach of Covenants' and states as follows 'if the rent or any part of thereof shall at any time remain unpaid for fourteen(14) days after becoming payable, whether formally demanded or not, or if at any time thereafter the tenant is in breach of any covenants or conditions referred to in the lease, it will be lawful for the landlord to re-enter the premises and thereupon the lease will cease to be without prejudice to any rights and remedies which may have accrued to the landlord against the tenant in respect of any breach of covenant.'
26. The clause therefore provides for breach of covenant to pay rent, as the only reason for the landlord to re-enter the premises and in extension obtain vacant possession. This act does not qualify as a termination as set out in section 2 of cap 301 as such the tenancy is unprotected tenancy.
27. Therefore, based on my keen analysis of the evidence presented and law, The Tribunal lacks jurisdiction to hear the reference as presented by the Tenant and the matter in its entirety.
49. To my mind, the ratio decidendi highlighted in the decision [supra], applies to the case at hand. Pertinently, the tribunal was divested of jurisdiction to entertain the dispute arising from the tenancy agreement under reference.
50. Consequently, and in the premises, my answer to issue number one [1] is threefold. Firstly, the Respondent herein freely and voluntarily entered and executed the terms of the Lease Agreement. To this end, the Respondent is bound by the terms of the contract.
51. Secondly, the Lease Agreement was for a duration exceeding 5 years. For good measure, the Lease term was 10 years 3 months. In this regard, the duration of the lease fell outside the purview of a controlled tenancy.
52. Thirdly, the impugned Lease Agreement also contained a provision for termination for breach of covenant by the tenant. In this regard, the existence of the clause which allowed the landlord to terminate for breach of covenant, similarly takes the tenancy outside of the purview of Section 2 of the Landlord and Tenants [Shops, Hotels & Catering Establishment] Act Chapter 301 Laws of Kenya. Simply put, the tenancy beforehand was not a controlled tenancy.



Issue Number 2 Whether the Tribunal was seized of the requisite jurisdiction to entertain the dispute arising out of the impugned Lease Agreement and by extension to issue the orders of injunction.

53. The Respondent herein filed the Reference dated the 24th July 2024 and wherein same [Respondent] sought to impugn the levying of distress and intended eviction of the Respondent from the demised premises.
54. Contemporaneously, the Respondent also filed the Notice of Motion Application dated the 24th July 2024 and wherein the Respondent sought for an order of temporary injunction.
55. Suffice it to point out, that the Tribunal entertained the Application dated the 24th July 2024 and thereafter proceeded to and granted an interim orders of injunction. Instructively, the interim order of injunction was granted on the 25th July 2024.
56. Other than the interim order of injunction which was granted on the 25th July 2024, it is also worthy to recall that the Respondent herein filed yet another Application dated the 6th September 2024. Pertinently, the Application under reference similarly sought for an order of injunction directed against the Appellant [landlord].
57. Notably, the Application dated the 6th September 2024 came up before the Tribunal on the 18th September 2024 and whereupon the tribunal proceeded to and granted certain orders. For good measure, the orders which were granted by the tribunal are as hereunder:
1. THAT Tenant shall be allowed quiet possession of the demised premises known as House No. 72 UN Crescent Gigiri which house is comprised in a Title Registered as Nairobi/Block 91/72 pending hearing inter-partes and Ruling on the Applications dated 25th July 2024 and 9th 2024 and the notices of Preliminary Objections dated 31/07/2024 and 10/09/2024.
 2. THAT parties file and exchange any responses and supplementary Affidavit[s] if need be, within 21 days of the date hereof.
 3. THAT we shall mention this matter on the 14th October 2024 to confirm compliance and take further directions on the disposal of the same.
58. It is the said orders [details in terms of the preceding paragraph] which have provoked the subject Appeal. Instructively, the Appellant contends that limb one of the orders issued on the 18th September 2024 constituted a mandatory injunction which was intended to reinstate the Respondent into the demised premises long after the Appellant had retaken possession.
59. The question that does arise and which the court must grapple with is whether or not the Tribunal was seized of the requisite jurisdiction to grant the interim injunction issued on the 25th July 2024 and more importantly, the mandatory injunction issued on the 18th September 2024.
60. To start with, therein no gainsaying that order of injunction [whether temporary or mandatory] are equitable remedies which can only be granted/issued by courts of law and not by the tribunals. In particular, the Business Premises Rent Tribunal is not conferred and/or bestowed with the statutory jurisdiction to grant an order of injunction.
61. Pertinently, the question as to whether or not the Business Premises Rent Tribunal can grant an order of temporary injunction was considered and highlighted by the Court of Appeal in the case of



Narshidas & Company Limited v Nyali Air Conditioning and Refrigeration Services Limited [1996] eKLR, where the court stated thus:

What does a controlled tenant confronted with an illegal threat of forcible eviction do? He cannot go to the Business Premises Rent Tribunal established under the Act as that Tribunal has no jurisdiction to issue an injunction or similar remedy against the landlord. That Tribunal has no jurisdiction to do so as was held by High Court in the case of The Republic vs Nairobi Business Premises Rent Tribunal & Others, ex parte Karasha, (1979) K.L.R. 147 and also in the case of Re: Hebtualla Properties Limited, (1979) K.L.R. 96.

62. Most recently, the Honourable Court of Appeal re-visited the question in the case of Ali Abdala Sheikh Omar & Another versus Haji Sharif Mombasa Civil Appeal No. 151 of 2019 [2022] KECA 600 (KLR) (6 May 2022) (Judgment), where the Honourable court stated as hereunder:

“16: The decision of this court in Narshidas & Company Limited v Nyali Air Conditioning and Refrigeration Services Limited [1996] eKLR, to which counsel referred his authority for the proposition that the business premises rent tribunal has no jurisdiction to issue an injunction or similar remedy against a landlord.”

17: The Business Premises Rent Tribunal was therefore not the forum to which the Appellant could turn to for the remedy that they were seeking. We conclude therefore that there is merit in the complaint that the learned judge erred in holding that the ELC lacked jurisdiction to entertain the Appellant suit.”

63. Other than the foregoing, this court has also had an occasion to speak to the question beforehand. The court addressed the question of jurisdiction of the Tribunal and whether same is seized of jurisdiction to grant an order of injunction in the case of Republic v Business Premises Rent Tribunal; Ama Industries Ltd (Exparte Applicant); Nairobi Transformer manufacturers (EA) Co Ltd (Interested Party) (Environment and Land Judicial Review Case E005 of 2023) [2023] KEELC 16647 (KLR) (23 March 2023) (Judgment), where the court state as hereunder:

72. In my humble view, an order of Ex-parte/interim injunction can only be issued to last for a maximum duration not exceeding 14 days. See the provisions of Order 40 Rules 4 of the Civil Procedure Rules, 2010, which provides as hereunder;

Notice of application [Order 40, rule 4.]

1. Where the court is satisfied for reasons to be recorded that the object of granting the injunction would be defeated by the delay, it may hear the application ex parte.
2. An ex parte injunction may be granted only once for not more than fourteen days and shall not be extended thereafter except once by consent of parties or by the order of the court for a period not exceeding fourteen days.
3. In any case where the court grants an ex parte injunction the applicant shall within three days from the date of issue of the order serve the order, the application and pleading on the party sought to be restrained. In default of service of any of the documents specified under this rule, the injunction shall automatically lapse.
4. All applications under this order shall be heard expeditiously and in any event within sixty days from the date of filing unless the court for good reason extends the time.



73. In view of the explicit and equivocal provisions reproduced in the preceding paragraph, there is no gainsaying that the impugned Ex-parte injunction granted by the vice chair of the Respondent was Ex-facie, illegal, unlawful and thus void.
64. Arising from the foregoing discussion, it is crystal clear that the Business Premises Rent Tribunal is not seized of the requisite jurisdiction to grant an order of temporary injunction. For good measure, the orders of temporary injunction and more particularly, the mandatory injunction aimed at reinstating the Respondent into the demised premises was illegal, unlawful and void.
65. Finally, it is apposite to state and underscore that where a court of law or tribunal entertains proceedings without the requisite jurisdiction, the impugned proceedings and the resultant order, if any, are rendered void.
66. In the case of Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service (Civil Appeal 244 of 2010) [2019] KECA 767 (KLR) (Civ) (10 May 2019) (Judgment), the court held as hereunder:
1. At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
 2. In common English parlance, 'Jurisdiction' denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae.
 3. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.
67. Similarly, the Supreme Court of Kenya in the case of In the Matter of the Interim Independent Electoral Commission (Applicant) (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR) (20 December 2011) (Ruling), stated as hereunder:
29. Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14): "I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step."
 30. The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by *the Constitution*.



68. In a nutshell, my answer to issue number two [2] is to the effect that the Business Premises Rent Tribunal was divested of the requisite jurisdiction to grant and/or issue the orders of interim injunction and mandatory injunction, respectively.
69. Furthermore, where a Tribunal issues orders without jurisdiction [like the ones beforehand] the resultant orders are void and invalid.

Final Disposition:

70. Flowing from the deliberations [details highlighted in the body of the judgment], it must have become crystal clear that the Appeal beforehand is meritorious. At any rate, it is also evident that the Tribunal was divested of the jurisdiction to entertain the dispute arising from the Lease Agreement dated the 13th April 2023.
71. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder:
- i. The Appeal be and is hereby allowed.
 - ii. The Proceedings vide Business Premises Rent Tribunal [BPRT Case No. E784 of 2024] be and are hereby struck out.
 - iii. The Orders of the Tribunal issued on the 18th September 2024 be and are hereby nullified.
 - iv. Costs of the Appeal and the costs incurred by the Appellant in the proceedings before the Business Premises Rent Tribunal, be and are hereby awarded to the Appellant.
 - v. For the avoidance of doubt, the costs in terms of clause [iv] shall be borne by the Respondent.

72. It is so Ordered.

DATED, SIGNED AND DELIVERED ON THE 16TH DAY OF DECEMBER 2024

HON. JUSTICE OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – Court Assistant.

Mr. Paul Onyango Carry Francis for the Appellant.

N/A for the Respondent.

