



Motorhub Limited v Trillium Properties (K) Limited (Tribunal Appeal E013 of 2025) [2025] KEHC 12202 (KLR) (Civ) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

TRIBUNAL APPEAL E013 OF 2025

TW CHERERE, J

MAY 29, 2025

BETWEEN

MOTORHUB LIMITED APPELLANT

AND

THE TRILLIUM PROPERTIES (K) LIMITED RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 15th May 2025 brought under Sections 1A, 1B, 3A, and 63(e) of the *Civil Procedure Act*, and Order 42 Rule 6 of the *Civil Procedure Rules*. The Appellant seeks the following substantive order:
 1. That there be a stay of execution of the ruling and order delivered by the Business Premises Rent Tribunal on 7th May 2025 in BPRT No. E140 of 2025 pending the hearing and determination of this appeal.
 2. Costs be provided for
2. The application is supported by the affidavit of the Appellant's Director Edward Karau Gachani sworn on even date and is premised on the grounds, inter alia, that the Appellant has a valid lease with the Respondent running from 22nd December 2022 to 14th September 2027; that the Tribunal erred in ordering payment of disputed arrears and granting vacant possession; that the Appellant has already filed an appeal with good prospects of success; that the Respondent has unlawfully blocked access to the premises; and that eviction will occasion substantial loss to the Appellant.
3. In response, the Respondent filed a replying affidavit sworn on 21st May 2025 by its Managing Director Steve W. Gitau, in which he deposes that the Appellant has been in persistent default of rent payments, that the Tribunal's orders were properly grounded in law and fact, and that the Appellant has already



vacated the suit premises. The Respondent annexed supporting documentation including emails, photographs, and a rent arrears statement.

4. The Respondent has also raised a fundamental objection to the jurisdiction of this Court, contending that by virtue of section 15(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap. 301, Laws of Kenya), the proper appellate forum is the Environment and Land Court.

Issues for determination

5. I have carefully considered the application in light of the affidavits on record and annexures thereto together with the submissions filed on behalf of the Respondent and I have determined the issues arising for determination as:
 1. Whether this Court has jurisdiction to hear the appeal and by extension, this application;
 2. Whether the application satisfies the requirements under Order 42 Rule 6 of the *Civil Procedure Rules*;

Analysis and Determination

1. Jurisdiction of this Court

6. It is trite that jurisdiction is the foundation of any judicial proceeding. In the celebrated decision of the Court of Appeal in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, Nyarangi, J.A. emphatically 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... A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

7. In *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others* [2012] KESC 8 (KLR) the Supreme Court reiterated the centrality of statutory and constitutional foundations of jurisdiction thus:

“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.”

8. The Supreme Court’s in *Hassan Ali Jobo & Another v Suleiman Said Shabbal* [2014] eKLR, [2014] KESC 34 (KLR) explained that a proper jurisdictional objection, being one that goes to the root of the matter, must be determined before the Court proceeds further.

9. Section 15(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301, provides in express and unambiguous terms as follows:

“Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court: Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.”



10. This statutory provision is couched in mandatory terms and undoubtedly vests exclusive appellate jurisdiction from determinations of the Business Premises Rent Tribunal in the Environment and Land Court. The use of the term “shall” and the express designation of the ELC as the appellate forum leave no room for discretion or alternative interpretation.
11. Accordingly, the High Court is divested of any appellate jurisdiction over decisions of the Tribunal rendered under Cap. 301.
12. This position has been affirmed in a catena of decisions, including Kitavi & Another v Ondieki [2023] (Civil Appeal E074 of 2023) [2023] KEHC 25236 (KLR) (8 November 2023) (Ruling) where the High Court declined jurisdiction over an appeal from the BPRT on the basis that the appeal lay to the Environment and Land Court.
13. The appropriate forum for the institution or prosecution of a suit is dictated by statute, not by the convenience, preference, or election of parties. Jurisdiction is a creature of law, and parties cannot by acquiescence, consent, or waiver confer upon a court a jurisdiction it does not possess. It is now firmly settled that proceedings instituted in a court lacking jurisdiction are null and void ab initio and incapable of being cured by the merits of the case or procedural compliance.
14. It follows, therefore, that this Court is bereft of jurisdiction to entertain the present application, or indeed, the appeal lodged herein. Jurisdiction must precede adjudication. Once a court finds that it lacks jurisdiction, it must down its tools, as any further engagement would be an exercise in futility and would render the resulting decision a legal nullity.

2. Stay Pending Appeal

15. It is a well-established principle that where the Court’s jurisdiction is found to be lacking, the matter must be dismissed and all other substantive issues cease to arise.
16. Having found that this Court lacks jurisdiction to entertain both the present application and the substantive appeal, the doctrine of judicial restraint demands that the Court refrain from pronouncing itself on any of the remaining issues, including the merits of the stay application.
17. To address the merits notwithstanding the jurisdictional deficiency would not only be an academic exercise but may also impermissibly prejudice proceedings properly instituted before the court of competent jurisdiction.

Disposition

18. From the foregoing analysis, the application dated 15th May 2025 and the appeal herein are accordingly struck out with costs to the Respondent.
19. This file is hereby closed.

DELIVERED AT NAIROBI THIS 29TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Appellants - Ms. Mache for Mwenda Njagi & Co. Advocates



For Respondent - Mr. Odongo for Waithaka & Associates Advocates

