



**Aboo & 2 others v Amo Properties (Civil Suit E074 of 2024)  
[2025] KEHC 12312 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E074 OF 2024  
F WANGARI, J  
JULY 31, 2025**

**BETWEEN**

**ABDULMAJID A. ABOO ..... 1<sup>ST</sup> PLAINTIFF**

**CHEMAN B. PATEL ..... 2<sup>ND</sup> PLAINTIFF**

**AZZAN SAID ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**AMO PROPERTIES ..... DEFENDANT**

**RULING**

1. The Plaintiffs filed a Notice of Motion application dated 26/11/2024 under Certificate of Urgency pursuant to Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3A of the [Civil Procedure Act](#), and all enabling provisions of the law.
2. The Applicants seek for orders;
  - a. That this court be pleased to restrain the Respondent/Landlord by themselves, their agents, servants and/or anybody working under their instructions from harassing, evicting the applicants or locking them out of their houses, and/or interfering with the Applicant/Tenants quiet possession and occupation of the suit premises Mombasa/Block XXIX/123 pending the hearing and determination of this suit.
  - b. That the OCS Central Police Station to enforce the orders; and
  - c. That costs of this application be borne by the Respondent/landlord.
3. The application is premised on grounds on its face and the Supporting Affidavit of Abdulmajid A. Aboo sworn on 26/11/2024. It was stated that the Applicants have been issued with notices to move out of the premises, which notices have been given in an unfair and discriminatory manner. The



Applicants have been in the suit premises for periods in excess of 56 years, and require at least 12 months which is sufficient to locate and move to other premises.

4. That moving to new premises will be tantamount to starting life afresh and that the reasonable thing to do is to give the Applicants at least 12 months to move given that the occupant on the ground floor which is intended to be repaired and expanded has been given 12 months' notice. That unless the orders sought are granted, the Applicants stand to suffer irreparable loss, damage and prejudice.
5. The Defendant filed a Notice of Preliminary Objection dated 06/12/2024 seeking to strike out the Plaintiffs' suit on grounds that this court lacks jurisdiction to entertain the suit as the cause of action as pleaded relates to a Landlord and Tenant matter, which does not fall within the jurisdictional preview of this court in line with Section 4 of the [Rent Restriction Act](#).
6. The suit before this court is thus fatally defective, a non-starter, void and null ab initio for being filed at the wrong judicial forum instead of the Rent Restriction Tribunal, hence should be struck out with costs to the Defendant.
7. The court herein issued directions for parties to file their written submissions.

### **Submissions**

8. The Applicants in their submissions dated 24/04/2025 argued that the High Court has unlimited original jurisdiction in criminal and civil matters including Landlord and Tenant disputes, as established under Article 165 of [the Constitution](#). The Applicants cited Section 2 of the [Rent Restriction Act](#) and submitted that only dwelling houses for which the rent does not exceed Kshs. 2,500 are covered under the Act.
9. That the rent paid by the Applicants was Kshs. 13,000 per month, taking this dispute far away from the [Rent Restriction Act](#) and the Rent Restriction Tribunal. The Applicants submitted that the Court of Appeal in *Narshidas & Co. v Nyali Air Conditioning & Refrigeration Services Limited*, Civ Appeal No. 205 of 1995 resolved the question of jurisdiction.
10. The Respondent filed its submissions dated 28/02/2025 argued that jurisdiction is the power that a decision-making body must possess to adequately adjudicate a dispute between two parties. That the Rent Restriction Tribunal is established under Section 4 of the [Rent Restriction Act](#). In assessing jurisdiction of the Rent Restriction Tribunal, the Respondent relied on the opinion of the Supreme Court in *Samuel Macharia & another v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR.
11. The Respondent submitted that upon perusal of the suit's pleadings and the Application dated 26/11/2024 at the first instance, it is quite notable that the issue herein is of a Landlord and Tenant matter. Therefore, the Applicant ought to have filed the same in the Rent Restriction Tribunal as it has been given power to examine, determine, interpret and apply laws, make orders and declare Judgements pertaining matters relating to Landlord and Tenants by the [Rent Restriction Act](#).

### **Analysis**

12. This court has considered the Notice of Motion application, supporting affidavit, the Notice of Preliminary Objection and submissions by the parties. The issues for determination are: -
  - a. Whether this court has jurisdiction to hear and determine the application and the suit herein
  - b. What are the orders on costs



13. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696. At page 700, Law, JA stated: -

“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 a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

14. For a Preliminary Objection to succeed the following tests ought to be satisfied;

- a. it should raise a pure point of law;
- b. it is argued on the assumption that all the facts pleaded by the other side are correct; and
- c. it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

15. A valid Preliminary Objection should, if successful, dispose of the suit or application.

16. The first issue is whether this court has jurisdiction to deal with Tenant/ Landlord disputes. *The Constitution* of Kenya under Article 162 [2] [b] establishes the Environment and Land Court. It provides as follows;

Systems of courts

162 [2] Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

[b] the environment and the use and occupation of, and title to, land.

17. The jurisdiction of the court is mentioned under section 13 [1] and [2] of the *Environment and Land Court Act*, No. 19 of 2011 which provides as follows;

Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162[2][b] of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162[2][b] of *the Constitution*, the Court shall have power to hear and determine disputes—
  - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b. relating to compulsory acquisition of land;
  - c. relating to land administration and management;
  - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and



- e. any other dispute relating to environment and land.
18. The Plaintiffs are seeking injunctive orders in respect to the suit property which they occupied as a tenants. This is in respect to the use and occupation of land. The jurisdiction therefore lies in the Environment and Land Court.
19. The issue of jurisdiction was settled in the case of “Owners of the Motor Vessel “Lillian S” v Caltex Oil [Kenya] Ltd [1989] eKLR where Justice Nyarangi, JA, as then he was held as follows: -
- “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. Where a court has no jurisdiction, there would be no basis <http://www.kenyalaw.org> - Page 8/27 Owners of the Motor Vessel “Lillian S” v Caltex Oil [Kenya] Ltd [1989] eKLR for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:
- “By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal [including an arbitrator] depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”
20. From the provisions of the law as stated herein above, the court that has jurisdiction over this matter is the Environment and Land Court. This court has got no jurisdiction even to determine whether the suit ought to have been filed in the Environment and Land Court or the Rent Restriction Tribunal as submitted by the Defendant. The court has got no option but to down its tools. I find that the Preliminary Objection is merited.
21. On costs, it is settled that the same follows the event. However, the court retains discretion whether to grant them or not. Furthermore, this discretion must be exercised judiciously and courts should not deprive a plaintiff/defendant of his or her costs unless it can be shown that they acted unreasonably. I find no reason to deny the Defendant the costs of this suit.

### **Determination**

22. Having found as above, the following orders flow therefrom: -
- a. The Preliminary Objection dated 06/12/2024 has merits and is hereby upheld.
- b. The suit is hereby struck out.



c. Costs to the Defendant

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

.....

**HON. F. WANGARI**

**JUDGE**

In the presence of:

Mr. Mwawasi Advocate for the Plaintiff

Mr. Rotich Advocate h/b for Mr. Maulidi Advocate for the Applicant

Ms. Norah, Court Assistant

