Ochieng v Obare (Civil Appeal E1372 of 2024)
[2025] KEHC 11475 (KLR) (Civ) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11475 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E1372 OF 2024

AC MRIMA, J

JULY 31, 2025

BETWEEN

HARUN OCHIENG ..... APPELLANT

AND

JOSHUA M. OBARE ..... RESPONDENT

(Being an appeal from the judgment and decree of Hon. M. Makori in Business Premises Rent Tribunal (BPRT) No. E517 of 2024 delivered on 14th November 2024)

JUDGMENT

Background:

1. Through an application by way of Notice of Motion dated 2nd May 2024, Joshua M. Obare, the Respondent herein, instituted a suit against Harun Ochieng, the Appellant herein, before the Business Premises Rent Tribunal (hereinafter referred to as 'the Tribunal' or 'the BPRT'). He sought to have the Appellant surrender vacant possession of the premises, he described as Kibra-Woodley.

2. In support of his case, the Respondent claimed that his quest to terminate the tenancy was instigated by the Appellant's failure to pay rent and because he wanted to carry out major renovations.

3. In retaliation, the Appellant filed an application by way of a Notice of Motion dated 12th August 2024. He urged the Tribunal to strike out the Respondent's application on the basis that the Respondent was neither the Landlord of the premises nor there existed any tenancy relationship. It was his case that he never executed any lease with the Respondent and any payments to him did not explicitly show payment of rent to him.

4. Upon considering the case, the Tribunal observed that the Respondent provided bank statements evidencing payment by the Appellant, a fact which established a landlord/tenant relationship. It also

made the finding that there was no evidence demonstrating that the premises were owned by persons other than the Respondent. In declining to terminate the tenancy, the Tribunal observed that the Respondent failed to issue a notice that was in consonance with the dictates of Section 4(1) of The Landlord & Tenants (Shops, Hotels & Catering Establishments) Act (hereinafter referred to as 'the Act'). It, however, ordered the Appellant make payment of rent arrears of Kshs. 150,000/- failure which the Respondent was at liberty to evict him.

The Appeal:

5. Aggrieved by the findings of the Tribunal, the Appellant lodged the Memorandum of Appeal dated 25th November 2024. He urged grounds of appeal as hereunder;

    1. The learned Honourable member erred in law and in fact in finding that the Respondent's Reference and Application dated 2nd May 2024 was partially merited.

    2. The learned Honourable member misdirected himself in fact and in law in finding that the Honourable Tribunal had jurisdiction and there was established Tenancy relationship between the appellant and the Respondent.

    3. The learned Honourable member erred in law and in fact in failing to note that the Notice to vacate premises served upon the Respondent never complied with the provisions of section 4(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments).

    4. The learned Honourable member erred in law and in fact in finding that there was an established Tenancy relationship between the Appellant and the Respondent based on non-existent bank statements.

The Submissions:

6. The Appellant urged his case further through written submissions dated 26th February 2025. In impugning the Tribunal's jurisdiction, the Appellant submitted that the Respondent failed to discharge the burden of proof that there existed a landlord-tenant relationship. It was his position that without clear evidence of a tenancy, the Tribunal acted outside its statutory mandate, rendering its ruling ultra vires, null, and void. The Appellant further submitted that the Appellant failed to abide by the provisions of Section 301 of the Act that calls upon Landlords of controlled tenancies to maintain a Rent book where all rent payments and particulars of the tenancy are recorded.

7. Further to the foregoing, the Appellant submitted that had the Respondent been the Landlord, he would not have been served with a statutory notice by the Nairobi City County warning him on the construction that amounted to creating nuisance. As regards the payment of rent, the Appellant denied that he made any payment and if that were the case, the Respondent would have provided documents including receipts, bank statement or M-Pesa transactions to confirm the payments.

The Respondent's case:

8. Joshua M. Obare challenged the appeal through written submissions dated 24th February 2025. He submitted that there was established a Landlord/tenant relationship through a tenancy agreement entered for a period of 5 years. It was his case that the Appellant had been paying rent until when he defaulted and as such, by dint of section 2(1) of the Act, the tenancy relationship was a controlled one.

9. In submitting on the propriety of the termination notice, the Appellant called to its aid the decision in South C Fruit Shop Limited v Housing Finance Company of Kenya Limited [2013] eKLR and argued that since he issued the notice on 15th January 2024 and was to terminate on 1st April 2024,

it conformed to the provisions of section 4(4) of the Act. He asserted that it was served upon the Appellant as evidenced by the Affidavit of service dated 2nd April 2024.

10. In the end, the Respondent argued that the Tribunal was justified in arriving at its decision. He urged the Court to dismiss the appeal with costs.

Analysis:

11. Having carefully considered the record, the written submissions and the decisions referred to, the issues that emerge for determination are follows: -

    i. Whether this Court has jurisdiction to deal with the appeal.

    ii. Depending on (i) above, whether there was in place a Landlord/Tenant relationship between the disputants.

    iii. The lawfulness of the termination notice.

12. This Court will now deal with the above issues as under.

Whether this Court has jurisdictionto deal with the appeal:

13. Before any Court embarks on the journey of dispute resolution, it must first satisfy itself that it has the requisite jurisdiction. It must possess the adjudicatory power donated to it by *the Constitution* or the law. The Court of Appeal in the longstanding case of Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd [1989] KLR 1 defined the term as hereunder: -

> ... By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance 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...

14. In Republic -vs- Karisa Chengo & 2 others [2017] eKLR the Apex Court further discussed the term jurisdiction as follows: -

> ...We note that in almost all the legal systems of the world, the term "jurisdiction" has emerged as a critical concept in litigation. Halsbury's Laws of England (4th Ed.) Vol. 9 at page 350 thus defines "jurisdiction" as "...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision." John Beecroft Saunders in his treatise Words and Phrases Legally Defined Vol. 3, at page 113 reiterates the latter definition of the term 'jurisdiction' as follows:
>
> .... By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance 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 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 cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given. (emphasis added)

15. In Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR the Court of Appeal spoke to the paramountcy of the concept and the need for Court to ascertain that they are clothed with it before resolving any matters in controversy. It was observed: -

> ... 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.

16. With the foregoing, this Court now turns to the matter at hand. The appeal before this Court is no doubt from the decision of the Tribunal. The dispute before the Tribunal was instituted pursuant to the provisions of the Act. Section 15 of the Act provides for appeals from the decision of the Tribunal as hereunder: -

> 15. Appeal to court:
>
> 1. 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.
>
> 2. In hearing appeals under subsection (1) of this section the Court shall have all the powers conferred on a Tribunal by or under this Act, in addition to any other powers conferred on it by or under any written law.
>
> 3. Deleted by *Act No. 2 of 1970*, s. 13.
>
> 4. The procedure in and relating to appeals in civil matters from subordinate courts to the Environment and Land Court shall govern appeals under this Act:
>
> 5. Provided that the decision of the Environment and Land Court on any appeal under this Act shall be final and shall not be subject to further appeal.

17. The law clearly speaks for itself. Section 15(1) of the Act accords the authority to adjudicate over an appeal from the decision of the Tribunal on the Environment and Land Court. This Court, therefore, finds and hold that it lacks the requisite jurisdiction over this appeal, but the Environment and Land Court. This Court cannot purport to take any further step in this appeal. It must down its tools and allow the dispute to be resolved by the Environment and Land Court which Court has the jurisdiction over the appeal as donated by the law.

18. In the premises, this Court finds no purpose in dealing with any of the remaining issues in this appeal.

19. Consequently, the following final orders do hereby issue: -

(a) The appeal is hereby struck out.

(b) The Appellant shall bear the costs of this appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Joshua Obare, the Respondent in person.

Amina/Michael – Court Assistants.