

KENYA / JUDGMENT

Jobenpha Community School v Kimani [2026] KEELC 5487 (KLR)

[2026] KEELC 5487 (KLR)**COURT**

Environment and Land Court

BEFORE

CA Ochieng

CASE / FILE NUMBER

Environment and Land Case E149 of 2026

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Jobenpha Community School v Kimani (Environment and Land Case E149 of 2026) [2026] KEELC 5487 (KLR) (21 September 2026) (Ruling) Neutral citation:

[2026] KEELC 5487 (KLR) Republic of Kenya In the Environment and Land Court at Nairobi
Environment and Land Case E149 of 2026 CA Ochieng, J September 21, 2026 Between
Jobenpha Community School Plaintiff and Kenneth Kaunda Kimani Respondent

Ruling

Background

1. The Plaintiff, which states that it is a private school, commenced this suit vide a Plaint dated 22 nd April 2026, alleging lawful occupation of LR Nairobi/Block 113/35, pursuant to an alleged Lease Agreement with Joy Women Group. It is also its case that in BPRT Case No. E1169 of 2025, which it was not party to, judgement was entered for the Defendant herein on 2 nd April 2026 against one Bernard Oyugi and that the Defendant has now purported to enforce the said judgement and threatened to evict it, action that would infringe on the rights of students preparing to sit for national examinations. It seeks orders inter alia; a declaration that the enforcement of the judgement in BPRT Case No. E1169 of 2025 against it, is unlawful, and a declaration that it is in lawful occupation of the suit property. Simultaneously with the Plaint, the Plaintiff filed a Notice of Motion application in which it seeks stay of the judgement and decree Of Hon. A Muma, issued on 2 nd April 2026 in BPRT Case No. E1169 of 2025. It also seeks to restrain the Defendant from interfering with the suit parcel pending determination of the suit. Preliminary Objection 2. In response, the Defendant filed a Preliminary Objection dated 5 th May 2026 which is for determination before this Court. He contends that this Court lacks jurisdiction to hear and determine the suit as the dispute arises from a landlord - tenant relationship which falls within the jurisdiction of the Business Premises Rent Tribunal, herein referred to as 'BPRT', established

under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act , herein referred to as 'Cap 301'. Further, that pursuant to Section 12 of Cap 301, the BPRT has exclusive jurisdiction to determine disputes relating to controlled tenancies, including termination, eviction and possession. He avers that the Plaintiff's claim, though couched as one of trespass and unlawful interference, in substance, is one contemplated under Section 12 of Cap 301. Response 3. The Plaintiff filed Grounds of Opposition in response. It contends that the Preliminary Objection does not raise a pure point of law, it raises contested issues that call for ascertainment of facts by production of evidence. Further, that on the face of the pleadings, the existence of a controlled tenancy within the meaning of Cap 301 is not established. It also contends that its pleadings disclose a proper and sustainable cause of action against the Defendant, warranting full hearing and determination on merit by this Court, as the jurisdiction of BPRT does not extend to determination of complex questions relating to trespass, enforcement of proprietary rights, unlawful interference with possession and other equitable remedies sought. 4. The Preliminary Objection was canvassed by way of written submissions.

Submissions

5. The Defendant submits that his Preliminary Objection is raised on jurisdiction, a pure point of law. He insists that the nature of the dispute as disclosed in the Plaintiff's own pleadings demonstrates that no evidentiary inquiry is required for the Court to determine whether it has jurisdiction, as the Plaintiff expressly admits at paragraph 4 of its Plaint that its occupation of the suit premises arises from a Lease Agreement. Further, that the Plaintiff also admits that the dispute arises from proceedings and judgment issued in BPRT Case No. E1169 of 2025, which it alleges that it was not a party to, and that execution has unlawfully been directed against it, allegations intended to improperly invoke the jurisdiction of this Court and in attempt to evade the consequences of the BPRT's judgment. He argues that even if the Plaintiff was not properly involved in the BPRT's proceedings, the law provides sufficient remedies, including review, an application for joinder and/or filing an Appeal against the BPRT's decision. 6. He submits that the Plaintiff cannot rely on a Lease Agreement to justify occupation while simultaneously denying the applicability of Cap 301 and challenging proceedings and enforcement of the Decree arising from the BPRT. He contends that parties cannot evade statutory dispute resolution mechanisms through artful drafting. He urges the Court to determine jurisdiction based on the substance rather than the form of pleadings. Further, that from the face of the Plaintiff's pleadings, the issue of trespass does not arise. He urges the Court to down its tools as the BPRT is clothed with jurisdiction to hear the dispute, under Cap 301. 7. To buttress his averments, he relied on the following decisions: *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* [2018] eKLR and *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment). 8. On its part, the Plaintiff submits that the Preliminary Objection is incompetent as it fails the legal threshold established in the case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd*

(1969) EA 696, since it is entirely dependent on disputed factual allegations concerning; whether the present claim merely constitutes a tenancy dispute. Further, that the Defendant has not demonstrated the existence of a controlled tenancy within the meaning of Section 2 of Cap 301. 9. It also submits that the Defendant improperly attempts to reduce the present dispute into an ordinary tenancy dispute contemplated under Section 12 of Cap 301 while its concerns; trespass, possessory and proprietary rights, constitutional due process violations and the legality of execution against alleged non-parties, which the BPRT lacks jurisdiction to conclusively determine, thus the issues falls under this Court's jurisdiction pursuant to Article 162(2)(b) of the Constitution and section 13 of the Environment and Land Court Act . It urges the Court not to prematurely terminate substantive proceedings without proper evidentiary interrogation as Article 159 of the Constitution requires of it. 10. To buttress its averments, the Plaintiff relied on the case of Independent Electoral & Boundaries Commission v Cheperenger & 2 others (Civil Application 36 of 2014) [2015] KESC 2 (KLR) (15 December 2015) (Ruling), among others which the Court has carefully considered.

Analysis and Determination

11. I have considered the instant Notice of Preliminary Objection, Grounds of Opposition including rivalling submissions and the issue for determination is whether this Court has jurisdiction to determine this dispute and if the instant Preliminary Objection dated 5 th May 2026 is merited. 12. The Defendant raised a Preliminary objection on the basis of jurisdiction. He argues that the dispute falls within Cap 301 which grants the BPRT exclusive jurisdiction over disputes concerning tenancies. He contends that the Plaintiff admits that its case is founded upon a Lease Agreement and alleges wrongful execution of a judgment rendered by the BPRT in BPRT Case No. E1169 of 2025. 13. On its part, the Plaintiff contends that the Preliminary Objection is incompetent because it is founded upon disputed facts, including whether its claim is merely a tenancy dispute, and if it was in a controlled tenancy, which issues require evidence. It argues that its case concerns trespass, unlawful interference with possession and illegal execution against a non-party, matters which it alleges fall outside the BPRT's jurisdiction. 14. The Court is called to determine whether the Defendant's Preliminary Objection raises a pure point of law or it is based on disputed facts as alleged by the Plaintiff. It is well settled that a Preliminary Objection must be on a pure point of law and cannot be raised if any fact has to be ascertained. This principle was well captured in the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696. 15. The Supreme Court also had occasion to state as follows on the same issue, in the case of Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others [2015] eKLR: " Thus a Preliminary Objection may only be raised on a 'pure question of law'. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts." 16. The Plaintiff contends that the dispute extends far beyond ordinary landlord/tenant relationship while the Defendant contends that it falls within the BPRT, a specialized Tribunal established under Cap 301. 17. It is settled that jurisdiction is everything and without it, a Court /Tribunal is called to down its tools. The Supreme Court

stated as follows in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR: “ 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. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

18. The jurisdiction of the BPRT is restricted to controlled tenancies and can also determine disputes touching on termination and possession. This Court will decipher whether the dispute herein falls under the BPRT. Section 2 of Cap 301 defines a controlled tenancy as follows: “ 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..”

19. The Plaintiff has argued that its case raises issues of unlawful interference with possession and illegal execution against a non-party, which it alleges fall outside the jurisdiction of the BPRT and within this Court’s jurisdiction pursuant to Article 162(2) (b) of the Constitution and Section 13(1) of the Environment and Land Court Act . This Court takes judicial notice of the fact that the Tribunal in BPRT Case No. E1169 of 2025 had dealt with the issue of tenancy between the Plaintiff and Defendant. Further, the Plaintiff even filed ELC Appeal No. E 035 of 2022 Bernard Oyugi t/a JOBENPHA School v Kenneth Kaunda Kimani (Suing as the Guardian of SAMUEL KIMANI KAROKI) where it sought to Appeal against the Ruling of the BPRT dated the 3 rd February, 2020 wherein it had been denied leave to file a reference against the BPRT judgement. In the judgement of the Appeal, Justice E. K Wabwoto observed at paragraph 14 that it was not in dispute that the tenancy relationship between the Plaintiff and Defendant was a controlled one. I note the Plaintiff is now insisting that that the existence of a controlled tenancy within the meaning of Cap 301 has not been established. Further, that its pleadings disclose a proper and sustainable cause of action against the Defendant, warranting full hearing and determination on merit by this Court, as the jurisdiction of BPRT does not extend to determination of complex questions relating to trespass, enforcement of proprietary rights, unlawful interference with possession and other equitable remedies sought.

20. On perusal of the Complaint, I note the Plaintiff at its prayer No. (C) seeks a declaration that the enforcement of the judgement in BPRT Case No. E 1169 of 2025 against it, is unlawful, null and void. It is my considered view that the Plaintiff seeks to abuse the Court process by filing the instant suit yet there is already a valid judgement from the BPRT, which it acknowledges and only filed this suit to circumvent its execution.

21. I have perused the judgement in BPRT E 1169 of 2025 and will proceed to reproduce an excerpt therefrom: “ The dispute has a long and winding history. The matter first came before this Court as Tribunal Case No. 575 of 2017 and 43 of 2018, where the Landlord sought leave to levy distress for rent and recover outstanding arrears. Through a Ruling dated 31 st July 2018, Hon. Mbichi Mboroki granted the Landlord the Orders sought and further ordered

that the Tenant vacates the suit premises on or before 15 th August 2018.....The matter resurfaced for the second time before the Tribunal in Case No. 132 of 2020 through Reference and Application filed by the Tenant. The application was dismissed through a Ruling dated 28 th March, 2022 with costs for lack of merit.....Subsequently, Landlord filed a Notice of Motion dated 5 th May, 2022 in Tribunal Case No. E 431 of 2022 seeking orders compelling the Tenant to surrender vacant possession of the suit property. The Tenant opposed the Application through a Replying affidavit in which he relied on his earlier dismissed Reference and Application dated 3 rd February, 2025.....At the same time the Tenant lodged an Appeal before the Environment and Land Court challenging the Ruling of 28 th March, 2022. This Court directed that Tribunal Case No. E132 of 2020 and Tribunal Case No. 431 of 2022 be consolidated. Upon hearing of the consolidated matters, the Tribunal delivered a Ruling dated 27 th April, 2023, finding that it had jurisdiction to order vacant possession and allowed the Landlord's application. This Tribunal further ordered that the Tenant surrender vacant position within 60 days, failing which the Landlord was permitted to break in and take possession with assistance of the OCS Embakasi Police Station. The Tenant's Appeal was subsequently dismissed with costs in ELC Appeal Case No. E 035 of 2022, through a Decree dated 25 th July, 2024. ...The Tenant once again approached the Tribunal through an Application dated 23 rd December, 2024, seeking to restrain the Landlord from interfering with the tenancy.....Through a Ruling dated 8 th April, 2025, Hon. Cyprian Mugabe struck out the suit of being res judicata and an abuse of the court process, dismissed the application with costs and ordered the file closed." 22. From this excerpt, it seems to me that the Plaintiff after the dismissal of its claims in the Tribunal has now changed tact and now claims possessory rights over the suit premises. In the circumstances, I find that this Court lacks the jurisdiction to hear and determine the suit as the dispute herein arises from a landlord- tenant relationship which falls within the jurisdiction of the Business Premises Rent Tribunal, pursuant to Section 12 of Cap 301, where the BPRT has exclusive jurisdiction to determine disputes relating to controlled tenancies, including termination, eviction and possession. In my view, the BPRT had already determined the dispute herein but the Plaintiff still seeks to sustain it by clothing it in different apparel but this won't do. 23. In the foregoing, I find the Notice of Preliminary Objection merited and will proceed to dismiss this suit with costs to the Defendant. DATED SIGNED AND DELIVERED AT NAIROBI THIS 21 ST DAY OF SEPTEMBER, 2026 CHRISTINE OCHIENG JUDGE In the presence of: Kadenge for Plaintiff Jane Kimani (for Administrator of Estate) Court Assistant: Joan

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Prepared on 29 October 2026 · Esheria