



**Kionga Investments Company & another v Kimani (Environment and Land Appeal
E030 of 2024) [2025] KEELC 6689 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E030 OF 2024
JG KEMEI, J
SEPTEMBER 30, 2025**

BETWEEN

**KIONGA INVESTMENTS COMPANY 1ST APPELLANT
JANE NJOKI GICHURE 2ND APPELLANT**

AND

DERICK JAMES KIMANI RESPONDENT

JUDGMENT

1. Vide an amended Memorandum of Appeal dated 4/4/2024, the Appellants invoked the appellate jurisdiction of this Court against the Ruling of the BPRT delivered by Hon Gakuhi Chege on 12/11/2021 in Nbi BPRT Cause No 986 of 2019 - Derrick James Kimani vs Kionga Investments Company & Jane Njoki Gichure, on the following grounds;
 - a. That the trial Court erred in law and in fact by completely misapprehending the principles governing a valid agreement.
 - b. That the trial Court erred in law and in fact in completely disregarding the pleadings, evidence and submissions of the plaintiff and therefore reached a wrong decision.
 - c. That the trial Court erred in law and in fact, and misdirected itself in holding that the monies paid as goodwill were the rent deposit.
 - d. That in appreciation of the matter that was before the Court and in his analysis of the submissions, the trial Court was clearly biased in favour of the Respondent herein.
 - e. THAT the trial Court erred in law and in fact by taking into account irrelevant considerations of the Respondent.
2. The Appellants have sought the following orders;



- a. The appeal be allowed with costs to the Appellants
- b. Business Premises Rent Tribunal's ruling dated the 12/11/21 and any consequential orders be set aside and substituted with dismissal orders
- c. The Court do grant such further orders and reliefs as it may deem just and expedient to grant.

3. On 25 June 2017, the parties elected to canvass the appeal by way of written submissions. Except for the Appellants, the respondent failed to comply with the Court's directions regarding the filing of written submissions.

4. Counsel for the Appellants submitted that in the lower Court, the tenant/respondent sought various orders against the Appellants arising from a tenancy dispute at the Golden Mile Complex in Nairobi. On 20/10/2015, the tenant entered into a lease agreement for shop No 5 at the said complex with the 2nd Appellant's husband. The terms of the lease agreed by the parties were; the term was for three years at a monthly rental of Kshs 55,000, with an escalation every two years. The tenant was to pay the sum of Kshs 50,000 as a deposit for the rent of the demised premises.

5. The main dispute between the parties was the tenant's claim that he had paid the deceased husband the sum of Kshs 500,000 as a deposit, a figure that was at variance with the deposit amount specified in the lease agreement mentioned above. Secondly, he claimed he was coerced to pay an escalated rent of Kshs 60,000 in 2019, and that the Appellants employed uncouth methods such as locking up the premises to force compliance with the new rent. The tenant therefore sought the refund of the alleged deposit of Kshs 500,000 and/or a set-off of the deposit against any current and future rents. He also sought an order for the assessment of the rent payable on the grounds that the amounts imposed and demanded by the Appellants were excessive given the location and condition of the demised premises.

6. After hearing the matter, the Tribunal ruled in favour of the respondent and found that the deposit of Kshs 500,000/- was valid and enforceable; the landlord was entitled to the increased rent of Kshs 60,500/- and that the tenant was entitled to the reliefs on account of the Appellant's repeated lockouts, business interference and failure to manage the deposit.

7. It was submitted that the Tribunal erred in finding that the tenant paid the deposit of Kshs 500,000/- to the deceased without any basis/evidence having been adduced by the tenant. The parties having been bound by the tenancy agreement, the Court was further faulted for holding that a deposit of Kshs 500,000/- was due and owing from the Appellant to the tenant thus rewriting the contract of the parties against the tested principle of contract law that states that parties are bound by the terms of their own contract unless coercion, fraud misrepresentation or undue influence are pleaded and proved by the one alleging. That the amount of Kshs 50,000/- contained in the agreement constituted the correct deposit, and not as alleged by the tenant, and the Court was urged to set aside the erroneous and excessive award.

8. It was further the submissions of the Appellants that the Court failed to consider the Appellant's case. That the Tribunal relied on extrinsic evidence to defeat a written contract of the parties. Citing the provisions of Section 107 of the *Evidence Act* which state that the legal burden rests with the person who desires a judgment in their favour and that it was incumbent upon the tenant to proof that indeed he paid the sum of Kshs 500,000/- as deposit and to the extent that he failed to do so, the Court erred in holding otherwise.

9. In the end the Appellants faulted the Tribunal for failing to weigh and consider the facts and evidence adduced by the Appellants thus arriving at a wrong decision.



Analysis and determination

10. Having considered the appeal, the written submissions and all the material placed before the Court. The key issues are;

- a. Whether the appeal before the Court is competent.
- b. Whether the appeal is merited.

11. I shall therefore proceed to determine the appeal bearing in mind that this being a first appeal, it is the duty of the Court to review the evidence adduced before the lower Court and satisfy itself that the decision was well-founded. In the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:

“ ...this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

12. Whether or not the Court will interfere with the decision of the trial Court will be guided by the principles set out in the case of *Mbogo & Another vs Shah* [1968] EA where the Court held as follows;

“ an appellate Court will not interfere with the exercise of the trial Courts discretion unless it is satisfied that the Court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous or unless it is manifest from the case as a whole that the Court has been clearly wrong in the exercise of judicial discretion and that as a result there has been injustice.”

13. Section 79G of the *Civil Procedure Act* provides that:

“ Every appeal from a subordinate Court to the High Court (read ELC) shall be filed within a period of thirty (30) days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the Appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”

14. In this case, the Ruling of the Tribunal was delivered on 21/11/2021. This appeal was filed on 4/3/24, a period of 3 years and 5 months and outside the stipulated period. There is therefore no valid appeal before this Court, and it is the view of the Court that the jurisdiction of the Court has not been invoked. The Court has not been shown that the Appellant obtained leave of the Court to file the appeal out of time.

15. Final orders for disposal

- a. For the above reasons the appeal is incompetent.
- b. It is struck out with no orders as to costs.

16. Orders accordingly.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025
THROUGH MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered Online in the Presence of;

1. Mr. Gakaria for the 1st and 2nd Appellants.
2. Mr. Gachugi for the Respondent
3. C/A – Ms Yvette Njoroge

