



**THE SUPREME COURT OF KENYA**  
**MILLY GLASS WORKS LIMITED Vs KENYA RAILWAYS CORPORATION & ANOTHER**  
**PETITION NO. E041 OF 2024**  
**DATE OF JUDGMENT: 16<sup>TH</sup> MAY, 2025**

**MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.*

**Orders: The Preliminary Objection allowed; and Petition of Appeal is struck out.**

By a lease agreement dated 16<sup>th</sup> January 1980, the 1<sup>st</sup> respondent, Kenya Railways Corporation (KRC), leased Mombasa/Block XL VIII/134 (*Suit Property*) to Kenya Glass Works Ltd for a term of 81 years, commencing from 1<sup>st</sup> January 1977, at an annual rent of Kshs. 22,000/-. On 26<sup>th</sup> April 1993, Kenya Glass Works transferred the lease to the appellant, who was then known as Bawazir Glass Works Limited and a certificate of lease was issued on 6<sup>th</sup> October 2000.

Clause 2 of the lease granted the 1<sup>st</sup> respondent the right to increase the annual rent upon the expiry of 30 years. On 1<sup>st</sup> January 1994, the 1<sup>st</sup> respondent increased the annual rent to Kshs.146,000/, which the appellant alleged it paid without objection. By a letter dated 30<sup>th</sup> September 2011, the 1<sup>st</sup> respondent sought to further increase the rent to Kshs.10,200,000/- effective 1<sup>st</sup> January 2012. Despite the appellant's objection, the 1<sup>st</sup> respondent appointed the 2<sup>nd</sup> respondent, Pamela Joy Ouko t/a Sadique Enterprises Auctioneers, to levy distress for the unpaid revised rent. In response, the appellant instituted proceedings before the *Environment and Land Court* (ELC) challenging the validity of the rent increment on the basis of its proper interpretation of the lease.

In a Judgment delivered on 4<sup>th</sup> November 2021, the ELC determined that the 1<sup>st</sup> respondent had the right to increase the rent after 30 years from 16<sup>th</sup> January 1980, the date the lease was signed. This meant that rent could be reviewed any time from 16<sup>th</sup> January 2010 onwards and thereafter in intervals of 30 years. Thus, the ELC found that the 1<sup>st</sup> respondent had no right to demand a rent increment in 2011 and that the next review would only be due in January 2024. Subsequently, the court ordered the 1<sup>st</sup> respondent to refund all sums paid in excess of the rent amount of Kshs. 146,000/-, together with interest at court rates from the date of payment until full settlement.

In enforcing the Judgment, the appellant filed garnishee proceedings seeking to attach the 1<sup>st</sup> respondent's accounts held at Kenya Commercial Bank Limited. In its Ruling delivered on 1<sup>st</sup> November 2022, the ELC allowed the application. It held that while Section 88 of the Kenya Railways Corporation (KRC) Act restricted attachment, it also imposes an obligation on the Managing Director to promptly pay any judgment sum. Further, that under Section 88 (b) of the KRC Act, the Managing Director has the power to permit seizure of some of the property of the 1<sup>st</sup> respondent to satisfy a court decree if

revenue was insufficient. However, the court noted that there was a legal gap in not specifying the consequences of the failure by the Managing Director to act as required. As a result, it held that requiring a successful litigant to file a separate suit for a mandamus order in such circumstances would not only hinder access to justice under Article 48 of the Constitution, but would also contradict Article 159(2) (b) which emphasizes that justice should not be delayed.

Discontented by the two ELC decisions, the respondents filed two appeals at the Court of Appeal: *Civil Appeal No. E083 of 2022* challenging the Judgment, and *Civil Appeal No E035 of 2023* against the Ruling. Both appeals were heard together, and a consolidated judgment was delivered on 25<sup>th</sup> October 2024 wherein the Court of Appeal allowed both appeals, having systematically addressed each one on its merits.

Dissatisfied by the outcome, the appellant appealed to the Supreme Court under Article 163 (4) (a) of the Constitution, with respect to the portion of the Court of Appeal’s Judgment that emanated from the ELC Ruling dated 1<sup>st</sup> November 2022 on the garnishee proceedings.

Before addressing the merits of the appeal, the Supreme Court found it necessary to first determine the question of jurisdiction, as raised by the respondents in their Preliminary Objection and substantive appeal. Upon consideration, the Court determined as follows:

1. The decisions of the High Court and Court of Appeal were confined to the statutory application of Section 88 of the KRC Act, rather than an examination of its constitutional validity. Consequently, the fundamental question before the superior courts below was not the constitutional validity of Section 88, but rather its applicability in garnishee proceedings. Accordingly, the mere invocation of constitutional principles in the judgment does not, by itself, elevate the dispute to one of constitutional interpretation or application within the meaning of Article 163(4)(a) of the Constitution.
2. As a result, the Court concluded that appellant was, therefore, not challenging a constitutional interpretation rendered by the Court of Appeal but rather the manner in which the court applied a statutory provision. Consequently, in the absence of jurisdiction, the Supreme Court downed its tools and struck out the appeal, upholding the Preliminary Objection with the appellant to bear the costs.

Accordingly, based on the above findings, the Court made the following consequential orders:

1. ***The Notice of Preliminary Objection dated 10<sup>th</sup> January 2025 and filed on 17<sup>th</sup> January 2025 be and is hereby allowed.***
2. ***The Petition of Appeal dated 27<sup>th</sup> November 2024 and filed on 4<sup>th</sup> December 2024 be and is hereby struck out.***
3. ***We hereby direct that the sum of Kshs. 6,000/= deposited as security for costs herein be refunded to the appellant.***
4. ***The appellant shall bear the costs.***

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