



**Wangatho v Gacheche (Environment and Land Appeal  
19 of 2024) [2025] KEELC 238 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 238 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL 19 OF 2024  
JO OLOLA, J  
JANUARY 30, 2025**

**BETWEEN**

**CHARLES GITHEMO WANGATHO ..... PLAINTIFF**

**AND**

**MARC TIMOTHY GACHECHE ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated 18<sup>th</sup> June, 2024, Charles Githemo Wangatho (the Appellant) prays for a stay of the Judgment issued by the Business Premises Rent Tribunal on 3<sup>rd</sup> June, 2024 in Nyeri Business Rent Tribunal Case No. E016 of 2023.
2. The application which is supported by an Affidavit sworn by the Appellant is premised on the grounds:
  - a. That the Appeal has good chances of success; and
  - b. That if the application is not heard on a priority basis, the Appellant shall be evicted from Plot No. Karatina Town Block 1/145 wherein the Appellant runs a hotel business and the Appeal shall be rendered nugatory.
3. Marc Timothy Gacheche (the Respondent) is opposed to the application. By his grounds of Opposition dated 2<sup>nd</sup> July, 2024, the Respondent asserts:
  - a. That the application is incompetent since the Appellant has not tendered any evidence of the substantial loss that will result if the orders are not granted;
  - b. That the Appellant has not offered any security for the due performance of the decree;
  - c. That the purported Appeal is frivolous and a non-starter as the issues raised in the Memorandum of Appeal have no relation to the termination of the tenancy; and



- d. That the application as crafted does not disclose any known legal grounds upon which the court can grant stay pending Appeal.
4. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Appellant acting in person as well as those by the Learned Counsel representing the Respondent.
5. By this application before the court, the Appellant prays for an order of stay of execution of the Judgment of the Nyeri Business Premises Rent Tribunal delivered on 3<sup>rd</sup> June, 2024 in Tribunal Case No. E016 of 2023. It is the Appellant's case that he runs a hotel business in the said plot No. Karatina Town Block 1/145 from which the Respondent seeks to evict him. It is further his case that he has been granted an inadequate period of notice to vacate the disputed premises.
6. In respect of an order for stay of execution, Order 42 Rule 6 of the [\*Civil Procedure Rules 2010\*](#) provides as follows:

“ 6 (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside.

(2) No order for stay of execution shall be made under subrule (1) unless-

- a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

7. Considering an application such as the one before me in [\*RWW -Vs- EKW\*](#) (2019) eKLR, the court observed as follows:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of an appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

8. In the earlier case of [\*Butt -Vs- Rent Restriction Tribunal\*](#) (1982) KLR 417, the Court of Appeal had offered guidance and held as follows:

“ 1. The Power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.



2. The general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the Judge's discretion.
  3. A Judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  4. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal
  5. The court is exercising its powers under Order XLI rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.
9. Considering the matter before me, there was absolutely no doubt that the application had been filed without delay. The Tribunal delivered its judgment on 3<sup>rd</sup> June, 2024 and some two weeks later, the Appellant filed this application.
10. On the question of whether or not the Appellant stands to suffer substantial loss, the Respondents submits that the Appellant has not tendered any evidence to the court of the substantial loss that will result if an order of stay of execution is not granted herein. As was stated in *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* (2012) eKLR:
- “No doubt in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under order 42 Rule 6 of the Civil Procedure Rules. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will created a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
11. From the Memorandum of Appeal as well as the impugned judgment annexed to the Appellant's application, it was apparent that his defence was the fact that he had constructed the suit premises on the Respondent's land at the tune of Kshs. 4,335,000/= with the consent of the Respondents. It was the Appellant's case that he runs a hotel and butchery business in the said premises and that he therefore stands to suffer great loss if he was evicted therefrom.
12. Looking at the circumstances of this case, I was persuaded that the subject matter of this appeal ought to be preserved by granting an order of stay of execution. If indeed the Appellant had spent the sum of Kshs. 4,335,00/- in constructing the suit premises, it was my view that proper accounts ought to be taken vis-à-vis the rent paid and that adequate notice be given before the tenancy was terminated.



13. It follows that I am persuaded that there is merit in the Motion dated 18<sup>th</sup> June, 2024. Accordingly, I hereby grant an order of stay of execution of the judgment rendered by the Tribunal on 3<sup>rd</sup> June, 2024 pending the hearing of this Appeal.

14. The Costs of the application shall be in the Appeal.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS SIGNED AND DATED AT MOMBASA THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

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**J.O. OLOLA**

**JUDGE**

\*\*Ruling delivered in the presence of:

- a. Firdaus the Court Assistant.
- b. Ms. Evelyn Wangari standing in for the Appellant
- c. Mr. Waithaka for the Respondents

