



Aballa & 2 others v Lenana Archade Limited (Environment and Land Appeal E054 of 2023) [2023] KEELC 18121 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18121 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E054 OF 2023**

**MD MWANGI, J
JUNE 21, 2023**

BETWEEN

JOSEPH SUNDAY ABALLA 1ST APPELLANT

PATRICIA AKUMU MALILI 2ND APPELLANT

**GEORGE STEPHEN OMONDI OGADA T/A SPICED ROCKS LIQUOR
STORE 3RD APPELLANT**

AND

LENANA ARCHADE LIMITED RESPONDENT

*(Being an Appeal from the Ruling of Honourable Cyprian Mugambi Nguthari,
Chairperson delivered on 19th May 2023 in Nairobi BPRT Tribunal Case No E202 of 2023)*

RULING

Background

1. The Applicants herein have filed an appeal to this court by way of the Memorandum of Appeal dated 2nd June 2023 against the ruling of the Chairperson of the Business Premises Rent Tribunal delivered on 19th May 2023, in BPRT Case No. E202 of 2023. The ruling according to the Appellants was in respect of a Preliminary Objection they had raised against the Reference and the application pending before the Tribunal and filed by the Landlord/Respondent herein. Their Preliminary Objection was to the effect that Tribunal did not have the jurisdiction to determine the application and the reference filed before it by the landlord since their tenancy was not a controlled tenancy. Consequently, the Appellants, position was that the Tribunal's jurisdiction was limited to controlled tenancies only.
2. The Appellants' case is that the Tribunal overruled their objection and held that it had the requisite jurisdiction to determine the application and the reference before it. The Appellants in the appeal pray that the said ruling of 19th May 2023 be set aside and replaced with an order upholding their



Preliminary Objection and striking out the Landlord's application and reference dated 22nd February 2023 with costs.

3. Pending the hearing and determination of the appeal, the Appellants filed the Notice of Motion application before this court seeking to stay any further proceedings before the Tribunal pending the hearing and determination of the appeal. The Notice of Motion is supported by the affidavit of Patricia Akumu Malili sworn on the 2nd June 2023.
4. The application is opposed by the Respondent by way of the grounds of opposition dated 16th June 2023.

Court's directions.

5. The court directed that the application be canvassed orally which happened on 19.6.2023. The court heard the advocate for the Appellants/Applicants, Mr. Omondi as well as the advocate for the Advocate for the Respondent, Mr. Lubullelah.

Analysis and Determination.

6. The issue for the court to decide is whether the proceedings before the Tribunal should be stayed pending the hearing and determination of the appeal filed by the Appellants.
7. As Ringera J (as he then was) stated in the case of *Re Global Tours & Travel Ltd* (HCWC No. 43 of 2000) whether or not to grant a stay of proceedings or further proceedings is a matter of judicial discretion to be exercised in the interest of justice. The sole consideration should be whether it is in the interest of justice to issue such an order.
8. I must state that I have not had the advantage of perusing the ruling issued by the Tribunal. The Appellants say that they are yet to be issued with the same. I am therefore not able to tell exactly what the reasoning of the Tribunal was in the impugned ruling. Was it that it was unable to decipher from the material before it whether the tenancy between the parties is controlled or not? or did it simply decide that the tenancy is a controlled tenancy falling within its jurisdiction? The parties were not in agreement as to the basis of the ruling of the Tribunal.
9. Be that as it may, the tribunal is yet to hear the application before it inter partes. It still has the opportunity to pronounce itself on the issue of jurisdiction in its ruling on the application. The constitution under article 159 (2) (c) implores on the courts in exercising their judicial authority to amongst other issues be guided by the principle that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute Resolution mechanisms shall be promoted. Amongst the alternative dispute Resolution mechanisms recognized are the Tribunals which article 169(d) of the constitution requires parliament to establish. The Business Premises Rent Tribunal is one such local tribunal established under the law.
10. The doctrine of exhaustion requires that where a dispute resolution mechanism exists, outside the courts, it be exhausted before the jurisdiction of the court's is invoked (*Geoffrey Muthiga Kabiru & 2 others -vs- Samuel Munga Henry & 1756 others* (2015) eKLR.)
11. It is appropriate that the appellants exhaust their options before the Tribunal before coming to this court.
12. The materials presented before me in any event are no sufficient to enable me make an informed determination on whether to issue the drastic order of stay of proceedings. I therefore dismiss the Appellants' application with costs to the Respondent.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JUNE 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Wendoh holding brief for Lubulellah for the Respondent.

Mr. Omondi for the Appellants/Applicants.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

