



**Muhammed v Mubira (Environment and Land Appeal E053 of 2023)
[2023] KEELC 22224 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22224 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E053 OF 2023
MD MWANGI, J
DECEMBER 13, 2023**

BETWEEN

SUHAIL MUHAMMED APPELLANT

AND

ESTATE OF KING'ANG'I MUBIRA RESPONDENT

*(In respect of the Appellant's application dated 29th November,
2023 seeking an order of stay of execution pending appeal)*

RULING

Background

1. This ruling is in respect of the appellant's application dated November 29, 2023 seeking for orders that:
 - a. Pending hearing and determination of this application there be a stay of execution till final hearing and determination of the appeal.
 - b. The Respondents be restrained by an order of the court from interfering with the appellant's peaceful enjoyment of tenancy on LR No. 209/91/17 Wambugu Road Parklands and proceedings in file RRT No. 744/2023 be stayed.
 - c. The nearest police station to reinforce the orders.
 - d. Costs of this application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Suhail Muhammed, the appellant herein, sworn on November 29, 2023. The appellant avers that the respondent terminated his tenancy unlawfully without regard to law and the terms of their tenancy. He alleges that the landlady never gave her the required statutory notice for termination of tenancy.



3. The applicant further deposes in her supporting affidavit that the respondent obtained orders from the Rent Restriction Tribunal on the November 7, 2023 to evict him from the premises; which orders adversely affect him and will cause great irreparable loss as he will be rendered homeless. He asserts that he is desirous of pursuing an appeal hence the Respondent should be restrained from executing the orders or evicting him from the premises.

Court's Directions

4. The court directed the applicant to serve the application for inter partes hearing. The applicant filed an affidavit of service sworn by one Henry Oyugi on the December 8, 2023 confirming service upon one Nancy Kingangi, the alleged administrator of the respondent. The Process Server alleges that he effected service through the WhatsApp of the administrator's Cell Phone Number on the December 8, 2023. The Respondent did not however file any response. The application is therefore unopposed.

Analysis and Determination

5. The Court of Appeal in the case of *Visbram Ravjiltalai v Thornton & Turnip* (civil Application No. Nai 15 of 1990 [1990] KLR 365 observed that whereas the Court of Appeal's power to grant stay pending appeal is unfettered, the High Court's (and now Courts of equal status') jurisdiction to do so under order 41 rule 6 (now order 42 rule 6) is fettered by 3 conditions, namely; establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further, the application must be made without unreasonable delay.
6. In his supporting affidavit, the appellant/applicant herein is very economical with details. He merely states that the respondent terminated his tenancy unlawfully without regard to the law and the terms of the tenancy. Further, that the respondent obtained orders from the Rent Restriction Tribunal (RRT) on November 7, 2023 to evict him from the premises.
7. A keen reading of the memorandum of appeal however, especially ground (1) reveals that the appellant who is a tenant of the respondent is indeed in rent arrears. He accuses the chairman of the RRT of failing to appreciate and find that he did not deliberately fail to settle the rent arrears. He does not disclose how much the arrears are.
8. The appellant/applicant has also not offered to pay the rent arrears due and owing, and or deposit the same either in court or in an interest earning account or alternatively, furnish security for the due performance of the decree. As I already noted he has not disclosed how much the rent arrears are to enable the Court assess what a reasonable security would be either.
9. As presented, the application by the Appellant/Applicant does not disclose any sufficient cause. The filing of the appeal on its own as aptly stated in rule 6 of order 42 of the *Civil Procedure Rules*, is not sufficient reason to warrant issuance of an order of stay of execution.
10. The applicant's only basis for the application is that the Tribunal's decision will expose him to execution that will render him homeless, and consequently, cause him to suffer irreparable loss and damage.
11. As clearly stated in the case of *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR, execution of a decree of a court is a lawful process and its likelihood or even its implementation alone cannot therefore amount to substantial loss. The applicant must establish other factors over and above the likelihood of execution of the decree or implementation of the execution process. In this case, I am not persuaded that substantial loss, which is the cornerstone of the jurisdiction of grant of stay of execution pending appeal, has been established.



12. I find no basis therefore for the exercise of the Court's jurisdiction in favour of the Appellant/Applicant.
13. As stated by Lord Mansfield in *R. v Wilkes* [1770] (98) EK 327, discretion when applied to Courts of justice means 'sound discretion guided by the law.' It must be 'governed by rule, not by humour, it must not be arbitrary, vague and fanciful; but legal and regular.'
14. The upshot is that the appellant's application lack merit and is hereby dismissed. Costs shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF DECEMBER, 2023.

M. D. MWANGI

JUDGE

