



**Vector Projects Limited & another v Sweetland Holdings Limited (Environment and Land Appeal E003 of 2022) [2022] KEELC 3547 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3547 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E003 OF 2022**

**LN MBUGUA, J  
MAY 12, 2022**

**BETWEEN**

**VECTOR PROJECTS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**ILLUMINE INTERNATIONAL LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SWEETLAND HOLDINGS LIMITED ..... RESPONDENT**

**RULING**

1. The background to this dispute is well captured in the ruling of 7.1.2022 before the Business Premises Rent Tribunal (BPRT) Case No. E322 of 2021. The Applicant (Vector projects) had filed a reference before the tribunal dated 19.7.2021 claiming that the landlord had locked them out and increased rent. The landlord was ordered to open the premises on 22.7.2021 but this did not happen.
2. Eventually, the tribunal delivered its ruling of 7.1.2022 stating that the contract between the parties was frustrated and the tenant was ordered to remove his padlocks and to take away his goods. By then, the tribunal had established that the tenant had locked up the premises with padlocks, while the landlord had welded the said premises.
3. The tenant thereafter filed an appeal before this court contemporaneously with a Notice of Motion dated 21.1.2022 seeking orders ; That there be stay of execution of the orders issued herein on 7th January, 2022 and any consequential order pending the hearing and determination of the application and the appeal and that the Respondent do pay costs.
4. The grounds in support of the application are that the tribunal delivered its judgment 7.1.2022 in favour of the Landlord/Respondent as against the Tenants/Applicants and that the latter has lodged an appeal which has overwhelming chances of success. That execution of the decision of the tribunal will render the appeal nugatory and that a stay of execution will maintain the status quo until the appeal is heard and determined.



5. It is further argued that execution will force the Applicant to vacate the suit premises which it has financially invested in a bid to suit its business, which is also a familiar location to its clients, thus it continues to suffer loss of business, investment and irreparable loss.
6. The applicants contend that they are ready to provide security pending the appeal as may be directed by the court.
7. The Respondent has opposed the application vide their replying affidavit dated 21.2.2022, averring that the Applicant has since removed their goods from the suit premises hence the orders sought have been overtaken by events and the order for stay cannot suffice. The Respondent thus states that the current application is an academic exercise.
8. I have considered all the arguments raised herein including the submissions of the parties. The relief of stay of execution pending Appeal is governed by Order 42 Rule 6 of the Civil Procedure Rules. In Loice Khachendi Onyango v Alex Inyangū & another [2017] eKLR the court held as follows;

“The relief is discretionary but the discretion must be exercised judiciously and upon defined principles of law; not capriciously or whimsically. Therefore, stay of execution should only be granted where sufficient cause has been shown by the Applicant. In determining whether sufficient cause has been shown, the Court should be guided by the three pre-requisites provided under Order 42 Rule 6 of the Civil Procedure Rules. .”
9. There is back and forth accusations between the parties, an issue that was clearly picked by the tribunal in its ruling of 7.1.2022 whereby upon visiting the premises, the tribunal found that the premises were locked by the Applicant/Tenant and welded by the landlord.
10. The key issue for determination as at now is whether the orders sought are tenable. In view of the findings of the tribunal, it was incumbent upon the Applicant to demonstrate the efforts they made to comply with the orders of 7.1.2022 since they too had locked the premises. Vide the letter of 25.1.2022 the Respondent/landlord was notifying the Applicant to come pick their goods. The response made by the Applicant 6 days thereafter on 31.1.2022, does not contain any tangible information on how and when they intended to comply with tribunal orders, and or pick their goods.
11. The application was argued orally on 23.2.2022 and by then, Applicants were aware of the contents of the replying affidavit of 21.2.200 particularly on the issue that the goods had been removed from the premises. Again no clear rejoinder was made by the Applicant, instead, the Applicant went on and on about how their 7 days given by the tribunal had not lapsed. In that regard, this court cannot make a pronouncement as to how the Applicants should pick their goods.
12. I find that there is no sufficient cause established by the Applicant to warrant the issuance of the orders of stay.
13. It is not lost to this court that in the tribunal ruling, it was observed that iron sheet structures had been constructed on top of the roof which did not form part of the original structures of the building and this was a risky venture which caused massive leakage in the whole building. This in itself is a pointer to the fact that a stay of the order of 7.1.2022 would not have been tenable even if the goods of the tenant were still in the premises.
14. The application dated 21.1.2022 is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.**



**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/S Nderu for the Applicant

Kaburu for the Respondent

**Court Assistant: June Nafula**

