



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kinyanjui t/a Pub Derockers v Kular (Environment and Land Appeal E055 of 2022) [2022] KEELC 15581 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 15581 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E055 OF 2022**

**JO MBOYA, J  
OCTOBER 31, 2022**

**BETWEEN**

**PURITY NJERI KINYANJUI T/A PUB DEROCKERS ..... APPELLANT**

**AND**

**INDERPAL SINGH KULAR ALSO KNOWN AS ANDY SINGH  
KULAR ..... RESPONDENT**

**RULING**

**INTRODUCTION AND BACKGROUND**

1. Vide the notice of motion application dated the July 13, 2022, the appellant/applicants herein has approached the court seeking for the following reliefs;
  - i. ....(Spent).
  - ii. That pending inter-parties hearing of this application there be a temporary stay of execution of the judgment/orders delivered/issued in BPRTC No. E555 of 2021 on June 24, 2021.
  - iii. That pending the hearing and determination of the appeal filed herein there be a stay of execution of the judgment/orders delivered/issued in BPRTC No. E555 of 2021.
  - iv. That the costs of this application be provided for.
2. The application herein is premised and anchored on the various ground contained and enumerated in the body thereof. Besides, the subject application is supported by the affidavit of the appellant sworn on the 13<sup>th</sup> July 2022 and to which the appellant has attached various documents.



3. Upon being served with the subject application, the respondent filed a replying affidavit sworn on the August 11, 2022 and to which the Respondent has attached a total of 6 annexures.
4. Suffice it to point out, that the application herein was placed before the court under certificate of urgency and same was indeed certified as urgent on the July 18, 2022 and thereafter the court proceeded to and issued various interim orders of stay of execution, albeit on certain conditions which were stipulated thereunder.
5. One of the conditions that the court gave was that the appellant was enjoined to pay the sum of Kshs.640, 000/= only, being half of the rent arrears to the respondent and on the other hand, to deposit the remainder sum of Kshs.640, 000/= only, being the remainder of the rent arrears with the Business Rent Tribunal pending the hearing and determination of the appeal.
6. Suffice it to point out that when the application herein came up for hearing, counsel for the appellant indicated that the appellant had complied with a segment of the orders of the court and essentially, the payment of Kshs.640, 000/= only, to the Respondent, but however conceded that the appellant had not complied with the other limb of the court order.
7. Be that as it may, the honourable court directed that the application herein be canvassed and prosecuted on the basis of oral submissions. Consequently and in this regard, the parties proceeded to and ventilated their submissions.

#### **Submissions by the Parties:**

##### **a. Appellant's/applicant's Submissions:**

8. Learned counsel for the appellant introduced the application and thereafter pointed out that the application was supported by the affidavit of the appellant sworn on the July 13, 2022.
9. Further, counsel pointed out that the appellant herein has been a tenant of the respondent in the premises situate on L.R No. 209/2490/4, within Ngara Area in the City of Nairobi.
10. It was further submitted that the appellant and the respondent herein have been engaged in various disputes before the Business Premises Rent Tribunal, culminating into a decision that was rendered on the June 24, 2022.
11. On the other hand, counsel pointed out that pursuant to the orders made on the June 24, 2022, the appellant herein was ordered and directed to pay the accrued/accumulated rent arrears amounting to Kshs.1, 280, 000/= only, being the amount that was due, outstanding and payable as at November 30, 2021.
12. Other than the foregoing, counsel pointed out that the tribunal has directed that the appellant does vacate the demised premises within 30 days from the date of the impugned order.
13. In this regard, counsel submitted that the nature of the order that was given and in particular the order of eviction, is such that unless the orders of stay are granted, the appellant shall suffer substantial loss.
14. Secondly, learned counsel for the appellant also submitted that the appeal that has since been filed raises arguable issues and hence the appellant ought to be afforded the requisite opportunity to ventilate the appeal prior to and before execution of the impugned orders of the tribunal.
15. Thirdly, counsel for the appellant further submitted that unless the orders of stay sought are granted, the appeal which has been so far filed and lodged shall be rendered nugatory.



16. Finally, learned counsel for the appellant added that the appellant herein has since substantially complied with the terms of the court orders issued on the July 18, 2022, by paying the sum of Kshs.640, 000/= only to and in favor of the Respondent.
17. However, counsel added that the appellant has not been able to comply with the other limb of the court order which directed that the remainder sum of Kshs.640, 000/= only be deposited with the Business Premises Rent Tribunal.
18. Be that as it may, counsel implored the Honourable court to find and hold that the appellant herein has satisfied the established conditions to warrant the grant of an order of stay of execution pending the hearing and determination of the instant appeal.

**b. Respondent's Submissions:**

19. The respondent herein relied on the replying affidavit sworn on the August 11, 2022, and raised/ highlighted four pertinent issues for consideration.
20. First and foremost, learned counsel for the respondent submitted that when the appellant herein approached the court vide the subject application, same was certified as urgent and the court granted certain interim orders albeit on condition.
21. However, counsel added that despite the orders and directions of the court, the appellant herein has not been able to fully comply with and abide by the terms of the orders of the Honourable court.
22. In this regard, counsel added that having failed, neglected and or refused to comply with the orders of the court, the appellant is not entitled to partake of or benefit from the equitable discretion of the court.
23. Secondly, learned counsel for the respondent pointed out that the appellant herein is a defaulting tenant who has accumulated and accrued a substantial amount of rent arrears and same does not make any meaningful efforts to settle the outstanding rents.
24. Premised on the fact that the appellant is admittedly in rent arrears, counsel for the respondent has submitted that the appellant herein shall not suffer any substantial loss, if the orders of stay are declined.
25. Thirdly, counsel for the respondent further submitted that the court had hitherto granted interim stay of execution pending the hearing and determination of the subject application and decreed payment of some sort of security.
26. However, the appellant herein has failed to comply with the terms of the said order and in this regard, counsel submitted that the appellant should not be dignified with any favorable orders, having failed to show and demonstrate utmost good faith.
27. Finally, counsel for the respondent submitted that the appellant herein has neither met nor satisfied the requisite conditions stipulated vide the provisions of order 42 rule 6(2) of the [Civil Procedure Rules 2010](#).
28. As a result of the foregoing, counsel for the respondent therefore invited the honourable court to find and hold that the application by the appellant was not merited.

**Issues for Determination:**

29. Having evaluated the application dated the July 13, 2022, together with the supporting affidavit thereto and having reviewed the replying affidavit sworn on the August 11, 2022; and similarly having



considered the submissions mounted on behalf of the parties, the following issues do arise and are pertinent for determination;

- i. Whether the appellant/applicant is entitled to the equitable discretion of the honourable court.
- ii. Whether the appellant/applicant has established that substantial loss shall occur or arise, if the orders sought are not granted.

## **Analysis and Determination**

### **Issue Number 1**

Whether the appellant/applicant is entitled to the equitable discretion of the honourable court.

30. Before venturing to address and consider whether the appellant has supplied and availed evidence to establish the existence of substantial loss, it is appropriate to mention a few background facts that are material and relevant.
31. It is common ground that the appellant herein has been and still is a tenant of the respondent, save that the Business Premises Rent Tribunal has since issued an order terminating the tenancy and directing handover of the demised premises.
32. On the other hand, it is also important to state that though the appellant remains in occupation of the demised premises, same however has accrued and accumulated a substantial amount of rent arrears. For clarity, the tribunal found and held that the appellant herein had accumulated rent arrears in the sum of Kshs.980, 000/= Only, as at May 2021.
33. Despite the finding and holding that the appellant had accrued and accumulated rent arrears in the sum of Kshs.980, 000/= only, the Appellant herein did not make any effort to settle, pay and liquidate the said rent arrears.
34. Premised on the failure and neglect to settle the accrued rent arrears, the respondent (read Landlord), was constrained to file/lodge a notice to terminate tenancy before the Business Rent Tribunal.
35. It is the Notice to terminate tenancy, anchored and based on the persistent default to pay rents, that led to the filing of the reference which ultimately gave rise to the decision, now being appealed against.
36. Other than the foregoing, it is also important to note that when the Appellant mounted the subject application, same was duly certified as urgent and indeed the court proceeded to and granted interim protection, albeit on terms.
37. It is not lost on this court that the appellant herein was ordered and directed to pay the sum of Kshs.640, 000/= only, to and in favor of the Respondent within 30 days from the July 18, 2022.
38. Other than the foregoing, the Appellant was also directed to deposit the sum of Kshs.640, 000/= only, being the balance of the Rents that had been found to be in arrears, with the Business Premises Rent Tribunal, within a similar time line.
39. Nevertheless, despite the clear terms of the orders that were issued by the court, the appellant indicated that as at the October 13, 2022, when the subject application was canvassed Inter-partes, same was yet to comply or fully comply with the orders/directions of this court.



40. From the foregoing, what is evident and apparent is that the Appellant herein, is a person who does not take court orders seriously. In fact, it appears that the court orders herein have no meaning, whatsoever to the appellant/applicant.
41. On the other hand, it is also discernable that even though the appellant remains in contempt of lawful court orders, both the appellant and her learned counsel, still have the audacity to appear before the same court and to tell the court that same are (sic) deserving of further court orders.
42. Surely, a court of law does not make orders for the sake of it or for cosmetic purposes. or For coherence, the orders of the court are made to be complied with , adhered to, or abided by.
43. To this end, it is appropriate to adopt and reiterate the holding of the court in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR, where the Court held as hereunder;

“A court order is not a mere suggestion or an opinion or a point of view.

It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door.

If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

44. Additionally, it is also trite and established that court orders are binding on parties and that a party knowledgeable of a court order is obligated/ obliged to comply with the terms thereof. Indeed, there exists an unqualified obligation to obey court orders, irrespective of ones perception, belief or reservations about (sic) the Legality or otherwise of the impugned court orders.
45. To this end, the dictum in the case of *Hadkinson v Hadkinson* [1952] 2 All ER 567, 575, in which Denning LJ said:

“It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged.

The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

46. Finally, where a party continues to disobey and disregard lawful orders, the party at fault, is not entitled to partake of or to benefit from equitable discretion of the court, not until the incidence of default/ contempt is duly remedied or addressed.
47. In this regard, this court is alive to the established position that was underscored vide the decision in the case of *Lucia Mwehya T/a Kalebran Enterprises v Nairobi Bottlers Limited & 3 others*[2012]eKLR, where the court held as hereunder:

The decision whether or not the party should be heard is an exercise of discretion on the part of the Court. In the celebrated case of *Hadkinson v Hadkinson* [1952] PD 285 [9720]the Court stated that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being heard but if his disobedience is such that, so long as it continues, it impedes the cause of justice, in the cause by making it more difficult for the Court to ascertain the truth or to enforce the orders which it might make, then the Court might in his discretion refuse to hear him until the impediment is removed or good reason is shown



why it should not be removed. See also *Mawani vs. Mawani* [1977] KLR 159; [1976-80] 1 KLR 607

48. Premised on the foregoing, I am not persuaded that the Appellant herein, who defiantly continues to disobey a lawful court order, should partake of or benefit from any further favorable orders from this honourable court.
49. Consequently, I am not disposed to dignify the appellant/applicant with any further orders, either of stay of execution pending the hearing and determination of the appeal or otherwise.

## **Issue Number 2**

Whether the appellant/applicant has established that substantial loss shall occur or arise if the orders sought are not granted.

50. The appellant herein also contended and submitted that unless the orders of stay are granted, same shall be disposed to suffer substantial loss. In any event, the appellant further contended that if the order of stay of execution is not granted, the respondent would proceed to levy eviction and therefore remove her from the suit premises, despite dependency of the appeal.
51. Nevertheless, what the appellant has not addressed is whether same is obligated and entitled to continue to occupy the suit premises, albeit without paying the requisite rents or meeting her part of the Bargain.
52. On the other hand, the appellant has also not addressed the legal implication of a tenant who has been found to be in substantial rent arrears and which rent arrears are not in dispute. For the avoidance of doubt, it is appropriate to state that the appeal herein relates to the orders issued on the June 24, 2022, but not the orders issued on August 6, 2021, the latter, being the orders that established the Quantum of rent arrears.
53. Suffice it to point out that the orders issued on the August 6, 2021 found and held that the appellant had accrued and accumulated rent arrears of Kshs.980,000/= Only, as at May 2021. Clearly, the appellant herein has not been timeous and prompt in the payment of her rents.
54. Premised on the foregoing, can it be said that the appellant is entitled to an order which will effectively keep her in the suit premises, while same is not meeting her corresponding obligations.
55. To my mind and without hesitation, such kind of an order would be contrary to Equity and Social Justice. For clarity, he who comes to Equity is obligated to do so with clean hands.
56. Contrarily, it is acknowledged and admitted that the suit property belongs to the Respondent. In this regard, it is therefore common ground that the Respondent is a person of known and established means, including ownership of the suit property.
57. Consequently and in the premises, if the appellant's appeal is ultimately heard and determined and the appellant is successful, the Appellant can very well attract compensation on account of any loss, if any, that may arise or accrue at the tail-end of the proceedings.
58. Premised on the foregoing, I am unable to find and hold that the appellant herein has indeed tendered, availed and established the existence of a likelihood to suffer substantial loss.
59. Being of the said mindset, I come to the conclusion that the orders of stay of execution being sought by the appellant herein are certainly not merited, more particularly, taking into account the obtaining circumstances.



60. Conversely, the circumstances obtaining and apparent in the subject matter, are such that it will not be in the interest of Justice and Fair-play to grant the orders sought.

61. To this end, I am suitably guided by the dictum in the case of *But v Rent Restriction Tribunal* [1979]eKLR, where the Court of appeal, per Madan J A observed and held as hereunder;

If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings.

62. To my mind, there exists an overwhelming hindrance in respect of the subject matter, inter-alia the quantum of rent arrears that has remained due, owing and unpaid and coupled with the appellant's disregard of lawful court orders.

63. Essentially, an order of stay ought not to be granted to aid a party to continue running roughshod on the adverse party. In a nutshell, the provisions of article 27 (1) and (2), inspire me to order and direct that even the respondent is entitled to Equal benefit and protection of the Law.

### **Final Disposition**

64. Having reviewed the highlighted issues, contained and reflected in the body of this ruling, I come to the conclusion that it would be inequitable, unjust and utterly unfair to grant the reliefs, sought at the foot of the application dated July 13, 2022.

65. Consequently and in the premises, I find and hold that the application herein is not only misconceived, but same is devoid of merits. In the premises, same be and is hereby dismissed with costs to the respondent.

66. For completeness, the Interim orders which were hitherto granted on the 1July 8, 2022, and whose terms were neither complied with nor adhered to, are similarly discharged.

67. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>st</sup> DAY OF OCTOBER 2022.**

**OGUTTU MBOYA**

**JUDGE**

**In the Presence of;**

Kevin Court Assistant

Mr. Gilbert Kinyua for the Appellant/Applicant.

Ms. Awuori h/b for Mr. Kefa Ombati for the Respondent.

