



**Osiewo v Maru & another (Environment and Land Appeal  
E015 of 2022) [2022] KEELC 14816 (KLR) (17 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14816 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E015 OF 2022  
EO OBAGA, J  
OCTOBER 17, 2022**

**BETWEEN**

**FRED OSIEWO ..... APPLICANT**

**AND**

**PAUL KIPYEGO MARU ..... 1<sup>ST</sup> RESPONDENT**

**GEORGE SAINA T/A BRIGHTON VILLAS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of Notice of Motion dated May 5, 2022, in which the Appellant/Applicant sought the following orders: -
  1. Spent
  2. Spent
  3. That there be a stay of the order of the Rent Restriction Tribunal made on the April 8, 2022 in Eldoret RRTC No. E031 of 2022 –Paul Kipyego Maru & George Saina T/A Brighton Villas Limited pending the hearing and determination of this appeal.
  4. That the costs of this application be provided for.
2. The applicant was a tenant of the respondents where he was paying monthly rent of Kshs 15,000/=. As at March 2022, the Applicant was in arrears of rent of Kshs 305,000/=. The Respondents filed a suit against him at the Rent Restriction Tribunal at Eldoret seeking recovery of the arrears and for leave to levy distress for rent.
3. The respondents contemporaneously filed a notice of motion in which they sought similar order as in the plaint. The applicant filed a replying affidavit to the respondent's' application but neither he nor



his counsel appeared during the hearing of the application. The application proceeded ex-parte. The Applicant's application for stay for execution was declined by the Rent Restriction Tribunal.

4. The applicant then preferred an appeal against the ruling of the Rent Restriction Tribunal as well as the current notice of motion. The appellate court did not grant orders of stay ex-parte preferring the application to be heard inter-parties. In response to the applicant's application for stay, the Respondents stated in an affidavit that the application had been overtaken by events in that the applicant had been evicted and was no longer a tenant of the Respondent.
5. The Applicant had been given leave to file a further affidavit but on June 27, 2022, the applicant's counsel informed the court that they did not wish to file a further affidavit. This being the case, the replying affidavit as well as the grounds of opposition by the Respondents remain uncontroverted. Courts do not give orders in vain. If the Applicant has been evicted from the suit premises, there is no need for the court granting stay orders as that would be acting in vain. The upshot of this is that the applicant's application is dismissed with costs to the Respondent as the same has been overtaken by events.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Ombego for Respondent.

Mr. Mathai for Mr. Kigamwa for Applicant.

Court Assistant –Albert

**E. O. OBAGA**

**JUDGE**

**17<sup>TH</sup> NOVEMBER, 2022**

