



**Lobo v Kingori (Environment and Land Appeal 10 of 2022)  
[2022] KEELC 14771 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14771 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL 10 OF 2022  
CK NZILI, J  
NOVEMBER 16, 2022**

**BETWEEN**

**PAUL LOBO ..... APPELLANT**

**AND**

**DOMINIC NTONGAI KINGORI ..... RESPONDENT**

*(Meru Business Premises and Rent Tribunal No 79 of 2018 on October 6, 2021)*

**RULING**

1. This ruling relates to two applications dated 12<sup>th</sup> & August 17, 2022 respectively. In the 1<sup>st</sup> application the court is asked to vary or review the orders issued on February 16, 2022 granting the applicant six months stay of execution and extend the same. The reasons given are that unless the orders sought are granted the applicant would be evicted from the suit premises, there will be substantial loss, the appeal will be rendered nugatory and that the application has been brought without unreasonable delay.
2. The application is supported by an affidavit of Paul Lobo sworn on the even date in which he says he depends on the business in the suit premises to generate income to sustain his family.
3. In the second application, the applicant seeks for temporary stay of execution of the orders made in Meru Business Premises and Rent Tribunal No 79 of 2018 on October 6, 2021 pending the hearing and determination of his appeal. The reasons are contained on the face of the application and a supporting affidavit of Paul Lobo sworn on August 17, 2022. The grounds are that there is an impending eviction out of the rental premises where he operates a bar and a restaurant.
4. That he relies on the bar for his income to maintain his family and that if the orders sought are granted there will be no prejudice to the respondent otherwise he would suffer substantial loss and his appeal rendered nugatory yet it has high chances of success.



5. The two applications are opposed by the respondent through a replying affidavit sworn by Dominic Ntongai Kingori on August 25, 2022.
6. The grounds are that the applicant has not demonstrated any efforts made to have the appeal disposed off for the last six months. That the applicant went to sleep and did nothing after obtaining the stay orders. That he intends to renovate and improve the suit property but has been delayed by the applicant. That court timelines must be adhered to and that if he had been granted an opportunity he would have cleared with the renovations and returned the premises to the applicant.
7. Order 42 rule 6 of the Civil Procedure Rules provides that a party to be entitled to stay of execution must demonstrate substantial loss, provide security for the due realization of the decree should the appeal fail, file the application without delay and lastly establish if it is in the interest of justice to grant the orders sought. While expounding on the principles applicable in a stay of execution. In Senate of the Republic of Kenya & 3 others vs Speaker of National Assembly of Republic of Kenya & 10 others (Application No (1) E 12) of 2022 KESC 18 (KLR) Civ) 19 may (2022) (ruling), the court granted a stay on public interest basis to prevent the infringement of the Constitution and also since the petition was yet to be heard.
8. In Seventh Day Adventist, Ltd vs Muslim Mosque Committee & 2 others (Civil App E 138 of 2021 (2022) KECA 100 (KLR) 11<sup>th</sup> February (2022) (ruling), the court said the length of the delay, reasons for the delay, degree of prejudice to the respondent if the application is allowed and perhaps chances of success of the intended appeal are some of the considerations in an application for stay.
9. In NIC Bank Ltd vs Aquinas Francis Wasike & another (2006) eKLR, the court said that the legal duty is on an applicant to prove the allegation that an appeal would be rendered nugatory. In Butt vs Rent Restriction Tribunal (1982) KLR 417, the court said the power to grant stay was discretionary so that the appeal is not rendered nugatory should that appeal reverse the decision appealed against and a judge should not refuse a stay, if a better remedy exists and the court must also consider the special circumstances of each particular case especially since the applicant has an undoubted right of appeal.
10. In Kinyunjuri Maguta vs Wotuku Maguta (2018) eKLR, the court said a party must over and above alleging substantial loss show how it will suffer in the event that the orders sought are denied.
11. Further, in James Wangalwa & another vs Agnes Naliaka Cheseto (2012) eKLR, the court held execution was a legal process and therefore did not by itself amount to substantial loss and that a party must establish other factors which show that execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal.
12. In Gitabi & another vs Warugongo (1988) KLR, the court held that the court must be even-handed without prejudicing the pending appeal or by giving the successful party a legitimate advantage and vice versa and that the rights of the two competing parties have to be preserved pending the appeal.
13. Applying the foregoing principles, the applicant says his appeal against the Business Premises Rent Tribunal (BPRT) ruling which has high chances, may be rendered nugatory if the eviction were to occur and given that he derives income from the business, he stands to suffer together with his family.
14. On the other hand, the respondent says he is desirous to renovate the suit premises and hand it over to the applicant who has inordinately delayed to prosecute the appeal and has greatly prejudiced him.
15. The respondent had given a termination notice of the tenancy which the applicant opposed by a reference. The purpose of the notice was to renovate the premises and improve on the facilities/rental premises.



16. The complaint by the applicant was that the respondent was not the proper landlord, he had no alternative premises to move his business to and had expensively improved on the premises yet his expenses would go to waste.
17. The applicant filed an appeal on February 22, 2022 following leave granted on February 16, 2022. Thereafter, several letters were sent by the Deputy Registrar requesting for the lower court file which is yet to be availed by the tribunal.
18. The appeal has raised several issues among them, whether the notice to terminate the tenancy was lawfully made, by a known landlord, in good faith and for good reasons.
19. If the applicant is evicted from the suit land, obviously the appeal will be rendered nugatory. The applicant will also suffer substantial loss especially if he has renovated the suit premises at a substantial cost which the respondent has not denied. The applicant has also continued to pay rent as and when it falls due. The respondent has not denied this.
20. Therefore, my finding is that substantial loss has been demonstrated, there has been no inordinate delay in prosecuting the appeal and or filing this application and lastly, it would be in the interest of justice to maintain and or preserve the suit premises.
21. The applicant shall continue to pay rent on its due date and any default thereof shall automatically vacate the orders herein. The order shall subsist for a period of twelve months only.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 16TH DAY OF NOVEMBER, 2022**

**In presence of:**

**C/A: Kananu**

Omari for applicant

Kinyua for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

