



**Nzyoki v Muya & 2 others (Environment and Land Appeal  
08 of 2024) [2025] KEELC 461 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 461 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL 08 OF 2024  
CA OCHIENG, J  
FEBRUARY 4, 2025**

**BETWEEN**

**MELCHIZEDEK NDOLO NZYOKI ..... APPELLANT**

**AND**

**PETER MUYA ..... 1<sup>ST</sup> RESPONDENT**

**BRIDGET SYOMBUA MUYA ..... 2<sup>ND</sup> RESPONDENT**

**MATOSHA EMPIRE (K) LIMITED ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for stay of execution of the Ruling and Order of the Business Premises  
Rent Tribunal (G. CHEGE CHAIR), delivered on 02.02. 2023 in Nairobi Tribunal Case)*

**RULING**

1. What is before Court for determination is the Applicant's Notice of Motion applications dated the 29<sup>th</sup> February, 2024 and 7<sup>th</sup> March, 2024. In the application dated the 29<sup>th</sup> February, 2024, the Applicant seeks the following Orders:
  1. Spent
  2. That pending the hearing and determination of this Application this honourable Court be pleased to grant a stay of execution of the Ruling and Order of the Tribunal issued on 2.2.2024 by Hon. G. Chege – Vice Chair.
  3. That pending the hearing and determination of the main Appeal, this Honourable Court be pleased to grant a stay of execution of the Ruling and Order of the Tribunal issued on 2.2.2024 by Hon. G. Chege – Vice Chair.
  4. That costs of this application be in the cause.



2. While in the Notice of Motion application dated the 7<sup>th</sup> March, 2024, the Applicant seeks the following Orders:
  1. Spent
  2. That pending the hearing of this Application this Honourable Court be pleased to grant a stay of execution of the Ruling and Order of the Tribunal issued on 2.2.2024 by Hon. G. Chege – Vice Chair.
  3. That pending the hearing and determination of this Application this Honourable Court be pleased to grant a stay of execution of the Ruling and Order of the Tribunal issued on 2.2.2024 by Hon. G. Chege – Vice Chair.
  4. That pending the hearing of the Application dated the 29.2.2024 this Honourable Court be pleased to grant a stay of execution of the Ruling and Order of the Tribunal issued on 2.2.2024 by Hon. G. Chege - Vice Chair.
  5. That pending the hearing and determination of the application dated 29.2.2024 this Honourable Court be pleased to grant a stay of execution of the Ruling and Order of the Tribunal issued on 2.2.2024 by Hon. G. Chege – Vice Chair.
3. The applications were premised on grounds on the face of it and the supporting affidavit of Melchizedek Ndolo Nzyoki where he confirms that the Ruling of the Tribunal was delivered in favour of the Respondents on 2<sup>nd</sup> February, 2024. He contends that being dissatisfied with the decision from the Business Premises Rent Tribunal (BPRT), he filed a Memorandum of Appeal including a Record of Appeal. He claims he is on the verge of being evicted from his business premises which he had occupied for the last 14 years, whose rent he has faithfully paid. He insists that he has paid his rent in advance to the 2<sup>nd</sup> Respondent upto 29<sup>th</sup> February, 2024 as contained in the Agreement dated the 5<sup>th</sup> July, 2021. He explains the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. He contends that the Tribunal's decision of 2<sup>nd</sup> February, 2024 is pegged on an alleged handwriting expert report, which was not produced by the maker.
4. The Respondents opposed the two applications by filing replying affidavits sworn by Antony Keli and Bridget Syombua. In the affidavit sworn by Antony Keli, who is a Director to the 3<sup>rd</sup> Respondent, he confirms that on 2<sup>nd</sup> March, 2024, the BPRT in BPRT Case No. E747 of 2023 (Nairobi) issued orders authorizing the forceful removal of the Appellant/ Applicant herein from Plot No. 29B Nguluni Market, should he fail to voluntarily vacate. He avers that on 6<sup>th</sup> March, 2024, he served the aforementioned Orders to the Officer Commanding Police Station (OCS) Tala Police Station requesting for their provision of security to facilitate the forceful removal of the Appellant/Applicant herein, in line with the Orders of the Honourable BPRT Case No. E 747 of 2023. Further, that the OCS verified the authenticity of the Orders aforesaid and on the 12<sup>th</sup> March, 2024, he forcefully removed the Appellant/ Applicant from the suit premises.
5. In the affidavit sworn by Bridget Syombua, she contends that the Applicant has willfully withheld material information from the Court. She explains that the Applicant participated in BPRT Case Nos. 479 of 2022 (Nairobi) and E 747 of 2023 (Nairobi). She confirms that in both matters the Applicant was ordered to pay rent arrears including costs. She disputes that the Applicant paid rent arrears upto February, 2024. She contends that the agreement in question dated the 5<sup>th</sup> July, 2021 was subjected to forensic examination by the Directorate of Criminal Investigation (DCI) and found to be a forgery. Further, that the Applicant failed to avail the aforementioned original agreement, when they asked him to do so. She insists that the Applicant was granted an opportunity to be heard by the Tribunal. She



avers that upon the Tribunal discovering the impugned Agreement was a forgery, the Applicant was directed to grant vacant possession of the suit premises, vide order dated the 2<sup>nd</sup> March, 2024 but he failed to do so, culminating in his forceful eviction on 12<sup>th</sup> March, 2024.

6. The Applicant filed a supplementary affidavit reiterating his averments as per the supporting affidavits, insisting that the replying affidavits contained falsehoods. Further, that he was not accorded an opportunity to produce his own report. He contends that he was never evicted from the suit premises but the Respondents closed the said premises. Further, that all his properties are locked in the suit premises.
7. The two applications were canvassed by way of written submissions.

### **Analysis and Determination**

8. Upon consideration of the two Notice of Motion applications dated the 29<sup>th</sup> February, 2024 and 7<sup>th</sup> March, 2024 including the respective affidavits and rivalling submissions, the only issue for determination is whether the Applicant should be granted a stay of execution of Ruling and Order of the Tribunal issued on 2<sup>nd</sup> February, 2024 by Hon. G. Chege – Vice Chair, pending the outcome of the Appeal.
9. The legal provisions governing stay of execution pending appeal is outlined in Order 42 Rule 6(2) of the [Civil Procedure Rules](#) which stipulates thus: ‘ No order for stay of execution shall be made under subrule (1) unless— (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.’
10. The Court of Appeal in the case of [Butt v Rent Restriction Tribunal](#) [1982] KLR 417 while dealing with an issue of stay of execution held inter alia: “1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion. 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings. 4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.’
11. Further, in [James Wangalwa & Another v Agnes Naliaka Cheseto](#) (2012) eKLR the Court of Appeal held that: ‘ an Applicant must establish factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as a successful party.
12. From a perusal of the impugned Ruling and Order issued on 2<sup>nd</sup> March, 2024, which is sought to be appealed from, I note the Appellant was directed to grant vacant possession of the suit premises or be forcefully evicted. Further, the Respondents confirm the Appellant was evicted on 12<sup>th</sup> March, 2024. However, the Appellant insists he was not evicted but the suit premises closed. The Appellant claims he paid the full rent and disputes that he forged the impugned Agreement but from a perusal of the Ruling, I note the Tribunal considered the DCI’s report and found that the alleged Agreement was forged which fact is disputed by the Appellant. However, from the proceedings herein including the averments in the respective affidavits, I find that since the Appellant is no longer in possession or occupation of the suit premises, the prayers sought herein have been overtaken by events.



13. In the foregoing, while associating myself with the decisions I have cited, it is my considered view that the Appellant has not demonstrated what substantial loss he stands to suffer if the stay order was declined since he is not in possession of the suit premises.
14. In the circumstances, I find the instant two Notice of Motion applications unmerited and will proceed to dismiss them with costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

