



**Red & Yellow Outdoor Limited v Shiloah Investments Limited (Land Case Appeal E108 of 2024) [2025] KEELC 508 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 508 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
LAND CASE APPEAL E108 OF 2024**

**E ASATI, J**

**FEBRUARY 6, 2025**

**BETWEEN**

**RED & YELLOW OUTDOOR LIMITED ..... APPELLANT**

**AND**

**SHILOAH INVESTMENTS LIMITED ..... RESPONDENT**

**RULING**

**Introduction**

1. Two applications filed by the Applicant/Appellant are before court for determination. The first application is the Notice of Motion dated 21<sup>st</sup> December, 2024 seeking for an order of prohibition, prohibiting the Respondent or its agents from evicting the Applicant or in any way, interfering with the Appellant's quiet possession of the suit premises. The application also seeks for costs of the application.
2. The second application is the Notice of Motion dated 2<sup>nd</sup> January, 2025 seeking for orders that:
  - i. the Respondent be ordered to the Applicant full access to suit premises pending the hearing and determination of the application and the Memorandum of Appeal dated 21<sup>st</sup> December, 2024.
  - ii. the Landlord, its agents or employees be restrained from interfering with his peaceful and quiet occupation of the suit premises at Kisumu Mega Plaza, pending the hearing and determination of this application and the Memorandum of Appeal dated 21<sup>st</sup> December, 2024.
  - iii. the Respondent be ordered to release to the Applicant all goods and tools of trade that he seized from the suit premises pending the hearing and determination of this application and the Memorandum of Appeal dated 21<sup>st</sup> December, 2024.
  - iv. the Respondent be accordingly sentenced for contempt of order of the court issued on 27<sup>th</sup> December 2024.



v. The OCS Kisumu Central Police Station to enforce compliance.

vi. Costs of the application.

The applications were opposed.

The applications were argued together orally on 21<sup>st</sup> January, 2025.

#### **Application dated 21<sup>st</sup> December 2024**

2. The application dated 21<sup>st</sup> December, 2024 was based on the grounds that the Applicant's Reference to the Business Premises Rent Tribunal (BPRT) was dismissed as a result of a preliminary objection raised. That the Applicant stands to suffer irreparable loss if the prayers sought are not granted.
3. The application was supported by the averments in the Supporting Affidavit and the Further Affidavit of Ben Ogombe Okeye stating that the orders sought were to preserve the tenancy pending the hearing and determination of the Memorandum of Appeal. He stated that the tenancy between the applicant and the Respondent was a protected tenancy that could not be terminated by effluxion of time. That there was no eviction that took place but a partial mutilation of only one of the 3 walls the applicant had leased from the Respondent.
4. He stated further that the applicant had a running contract with East African Breweries Limited which contract was being frustrated and that the Respondent remains in contempt of court.
5. The application was opposed vide the Grounds of Opposition dated 13<sup>th</sup> January, 2025. The Respondent's case is that the appeal being one from the decision of the Business Premises Tribunal, arises from a purely commercial dispute and does not lie to this court and should therefore be struck out. That the application is founded on provisions that are unknown to the law. That the law does not provide for interlocutory prohibition pending hearing of an appeal. That the court's jurisdiction has not been properly invoked. That the cited provisions of the law have no bearing on appeals.
6. The application was also responded to vide the Replying Affidavit sworn by Suku Elisha Shawin on 13<sup>th</sup> January, 2025 wherein it was deposed to that the Respondent by its letter of 27<sup>th</sup> July, 2024 informed the Applicant that it was not going to renew the agreement and that the Applicant should remove its equipment before 31<sup>st</sup> July, 2024 when the agreement was formally terminating.
7. That the Respondent removed from its premises the Applicant's equipment and paintings on its wall which exercise was completed on 19<sup>th</sup> December, 2024.
8. That because the Applicant never gave Notice of its intention to renew the agreement, the Respondent had on 17<sup>th</sup> July, 2024 entered into an agreement with another advertiser to take up the advertising space being vacated by the Applicant with effect from 1<sup>st</sup> December, 2024.
9. That by the time the application (dated 21<sup>st</sup> December, 2024) was filed, the Applicant had already been evicted from the premises. That the orders obtained on 27<sup>th</sup> December, 2024 were so obtained on material non-disclosure by the Applicant that it was no longer occupying the space, that was the subject of its agreement with the Respondent.
10. That the orders were also obtained on material non-disclosure that the agreement pursuant to which the Applicant was occupying the space had terminated by effluxion of time as provided in the agreement wherefore the Applicant has no legal basis for wanting to remain on the space.



11. That the Applicant is in arrears of rent and it has no tenancy to be preserved since the agreement it had with the Respondent expired in July, 2024. That the appeal has no prospects of success. That the Applicant has not offered security as a condition for grant of an order of stay of execution.
12. It was submitted on behalf of the Applicant that the court has inherent power to make any orders it deems fit. That the grounds raised in opposition of the application and particularly ground 4 and 5 are on technicalities. That the Applicant has no rent arrears and instead, it had made an over payment of Kshs.24,000,000. That the court has jurisdiction because the appeal is against the ruling of the Business Premises Rent Tribunal. The Applicant requested the court to preserve the premises.
13. On behalf of the Respondent, it was submitted that an appeal does not lie in the matter to the Environment and Land Court. That under article 162 of *the Constitution* of Kenya and the provisions of the *Environment and Land Court Act*, jurisdiction was restricted.
14. That the relationship created by the agreement was a commercial relationship which does not concern use of land within the jurisdiction of the Environment and Land Court.  
That the grounds for stay of execution have not been demonstrated.
15. I have considered the application dated 21<sup>st</sup> December, 2024. The substantive prayer sought is for an order of prohibition, prohibiting the Respondent from evicting the Applicant. In his submissions, the Applicant asked the court to preserve their premises.
16. I have taken into account the grounds raised by the Respondent in both the grounds of opposition and the Replying Affidavit. It is clear that the agreement pursuant to which the Applicant occupied the Respondent's advertising space had elapsed as at the time of filing the application. It is also clear that as at the time of filing the application, the Applicant had been removed from the advertising space.
17. This means that the eviction that the Applicant seeks to prohibit had already taken place. The Applicant did not disclose this to the court in its application. The order of prohibition sought is not provided for at the appeal stage. But even assuming that the intended prayer sought was for stay of execution of the orders of the Tribunal pending appeal, the grounds for grant thereof have not been demonstrated.
18. Whether the termination of the agreements was lawful and whether the Tribunal had jurisdiction will be the substantive issues in the appeal.

#### **Application dated 2<sup>nd</sup> January 2025**

19. On the basis of the findings, on the 1<sup>st</sup> application dated 21 December, 2024, the second application 2<sup>nd</sup> January, 2025 is misconceived. As the agreements pursuant to which the Applicant occupied the Respondent's advertising space had expired and as the Applicant had already been removed from the space, I find no basis upon which to order that the Applicant be given access to the premises. It was the Respondent's case that there is a third party who has already taken up the space.
20. There are no grounds upon which to restrain the Respondent from interfering with the suit premises or to cite or sentence the Respondent for contempt. It appears that by the time the order of the court dated 27<sup>th</sup> December, 2024 was being served upon the Respondent, the Applicant had already been removed from the advertising space.
21. The Respondent's case was that the exercise of removing the Applicant from the premises was completed on 19<sup>th</sup> December, 2024, even before the application was filed. It was submitted on behalf of the applicant that it did not know that it had been removed from the premises.



22. I find that both applications lack merit. The applications dated 21<sup>st</sup> December 2024 and 2<sup>nd</sup> January 2025 are hereby dismissed.

Costs to the Respondent.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Aluko for the Applicant

Wasuna for the Respondent

