Ng'inja v Gudah (Environment and Land Appeal E021 of 2025)
[2025] KEELC 5127 (KLR) (8 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5127 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ENVIRONMENT AND LAND APPEAL E021 OF 2025

SO OKONG'O, J

JULY 8, 2025

BETWEEN

DOROTHY NG'INJA ..... APPELLANT

AND

AUGUSTINE O GUDAH ..... RESPONDENT

RULING

1. The Respondent is the owner of residential premises known as Five M. Flats situated at Bondo Sub-County, Siaya County (hereinafter referred to as "the suit property"). The Appellant is a tenant of the Respondent in respect of the said premises, paying a monthly rent of Kshs. 12,000/-. The Appellant filed a suit against the Respondent at the Rent Restriction Tribunal (hereinafter referred to as "the Tribunal") at Kisumu, namely, Rent Restriction Case No. E136 of 2024 seeking an injunction to restrain the Respondent from evicting, harassing, intimidating and/or conducting himself in any manner that interferes with the Appellant's peaceful occupation of the suit property. The Appellant sought further orders that the Respondent be compelled to restore electricity and water on the suit property. The Appellant averred that the Respondent had been harassing, intimidating and frustrating her so as to compel her to vacate the suit property. The Appellant averred that the Respondent had disconnected her electricity and water supply.

2. The Respondent filed a defence and a counter-claim against the Appellant at the Tribunal on 27th August 2024. The Respondent admitted that the Appellant was her tenant on the suit property. The Respondent, however, denied the allegations of harassment levelled against him by the Appellant. The Respondent averred that he served the Appellant with a notice on 18th March 2024 seeking to terminate her tenancy on 31st May 2024 on the ground that he wanted to make structural adjustments on the premises for his own family's occupation. The Respondent averred that although the Appellant's notice to vacate expired on 31st May 2024, the Appellant refused to vacate and hand over possession of the suit property to the Respondent. The Respondent urged the Tribunal to dismiss the Appellant's

suit and enter judgment for the Respondent against the Appellant for, among others, a declaration that the Appellant's tenancy was terminated on 31st May 2024 and an order for vacant possession of the suit property.

3. The Tribunal heard the parties and issued an order on 19th December 2024 giving the Appellant up to 28th February 2025 to vacate and hand over possession of the suit property to the Respondent. The parties were also directed to reconcile rent accounts and file a joint report at the Tribunal.

4. The Appellant was aggrieved by the said orders of the Tribunal and lodged the present appeal on 16th January 2025. The Appellant challenged the decision of the Tribunal on several grounds. On 27th February 2025, the Appellant filed a Notice of Motion application dated 26th February 2025 seeking an order for a temporary stay of execution of said orders of the Tribunal pending the hearing and determination of the appeal herein. This is the application that is before me for determination.

5. The application was brought on the grounds set out on the face thereof and on the affidavit of the appellant sworn on 26th February 2025. The Appellant averred that the Respondent was in the process of evicting her from the suit property. The Appellant averred that if evicted from the suit property, the substratum of her appeal would be lost and she would suffer irreparable loss and damage.

6. The Respondent opposed the application through a replying affidavit sworn on 10th March 2025. The Respondent averred that the Appellant had refused to vacate the suit property despite several notices given to her to do so. The Respondent averred that there were several rental premises in Bondo town that the Appellant could move to. The Respondent averred that the Appellant was abusive, arrogant and was not having a good relationship with the other tenants on the suit property. The Respondent averred that as a result of the Appellant's unacceptable behavior, most of the tenants had vacated the suit property subjecting the Respondent to financial loss. The Respondent averred that the Appellant had also refused to clear the rent arrears for the months of December 2024, and January to March 2025. The Respondent averred that as a result of the Appellant's refusal to vacate the suit property, he was unable to make adjustments to the property for his own use as he had intended.

7. The application was heard on 7th July 2025. The Appellant submitted that she had a good appeal, and if the stay sought was not granted, she would be evicted from the suit property and would suffer irreparable loss. The Appellant submitted that she had school-going children and would find it hard to get an alternative house to move to.

8. In his submission in reply, the Respondent submitted that the Appellant was in rent arrears to the tune of Kshs. 63,000/- and was paying rent as and when she wished to do so. On the Appellant's claim that she had school-going children and would find it difficult to move out of the suit property, the Respondent submitted that the Appellant had only one child who was in a boarding school. The Respondent submitted that the child was not a valid excuse for the Appellant not vacating the suit property. The Respondent submitted that the Appellant's refusal to vacate the suit property had subjected him to suffering as he wanted to occupy the premises with his family.

9. I have considered the Appellant's application together with the affidavit filed in support thereof. I have also considered the replying affidavit filed by the Respondent in opposition to the application. The Appellant's application was brought under Order 42 Rule 6 of the Civil Procedure Rules. Order 42 Rule 6(2) of the Civil Procedure Rules provides that:

> "(2) No order for stay of execution shall be made under sub-rule (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 ultimately be binding on him has been given by the applicant."

10. In Kenya Shell Limited v. Karuga (1982 – 1988) I KAR 1018 the court stated that:

> "It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money."

11. I am not persuaded that the Appellant's application has met the threshold for granting an order for a stay of execution. The Tribunal's order giving the Appellant up to 28th February 2025 to vacate the suit property was made on 19th December 2024. As mentioned earlier, the Appellant's application for stay was not brought until 27th February 2025 a day to the expiry of the time that was given to the Appellant by the Tribunal to vacate the suit property. In the circumstances of this case, I am of the view that the application for stay was brought after unreasonable delay. Secondly, I am not persuaded that the Appellant would suffer substantial loss if the stay sought is not granted. The Appellant has not convinced me that she is unable to get another house to move to. The Tribunal gave the Appellant 60 days to look for alternative accommodation. It is now more than 6 months since the date of the Tribunal's order. I believe that if the Appellant wanted to get alternative accommodation, she had ample time to do so. The application having been brought after unreasonable delay and there being no evidence of substantial loss to the Appellant if the stay order sought is not granted, the application must fail.

12. The upshot of the foregoing is that the Appellant's application dated 26th February 2025 has no merit. The application is dismissed with costs to the Respondent.

DELIVERED AND SIGNED AT KISUMU ON THIS 8TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

The Appellant in person

The Respondent in person

Ms. J.Omondi-Court Assistant