



**Peter H.A Omedo t/a Littlewoods Consultancy v Maendeleo Ya Wanawake Organisation  
(Environment and Land Appeal E053 of 2025) [2025] KEELC 5146 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5146 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E053 OF 2025**

**CG MBOGO, J  
JULY 10, 2025**

**BETWEEN**

**PETER H.A OMEDO T/A LITTLEWOODS CONSULTANCY ..... APPLICANT**

**AND**

**MAENDELEO YA WANAWAKE ORGANISATION ..... RESPONDENT**

**RULING**

1. Before this court is the notice of motion dated 17<sup>th</sup> March, 2025 filed by the appellant/applicant and it is expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules and Sections 1, 1A, 1B and 3A of the *Civil Procedure Act* seeking the following orders: -
  1. Spent.
  2. That there be a stay of execution of the Ruling of Hon Patricia May, member, Business Premises Rent Tribunal dated the 19<sup>th</sup> February, 2025 pending the hearing inter partes hereof.
  3. That there be a stay of execution of the Ruling of Hon. Patricia May, member, Business Premises Rent Tribunal dated the 19<sup>th</sup> February, 2025 pending the hearing and determination of the appeal herein.
  4. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of appellant/applicant sworn on even date. The appellant/applicant deposed that being dissatisfied with the judgment delivered on 19<sup>th</sup> February, 2025, he seeks stay of execution as he will suffer substantial loss. He deposed that the appeal is not frivolous, and that the court erred in law and fact by allowing the respondent's claim and dismissing his counterclaim. Further, the appellant/applicant deposed that if evicted or distressed from the property, the appeal shall be rendered as spent.



3. The application was opposed by the replying affidavit of Elizabeth Mayieka, the National Secretary and Chairperson of the Building and Asset committee of the respondent sworn on 2<sup>nd</sup> April, 2025. The respondent deposed that the application is an abuse of court process intended to further delay the settlement of the admitted rent in arrears. It was deposed that the appellant/applicant has not demonstrated that he will suffer irreparable harm that cannot be compensated by way of damages, and that the alleged loss of goodwill and business can be quantified in monetary terms. The respondent deposed that it has been considerate of the appellant/applicant's medical condition but that the substantial rent in arrears have accumulated over a prolonged period of time exceeding the period of the claimed medical emergency. Further, that allowing the application would unjustly enrich the appellant/applicant by allowing him to continue occupying the premises without paying rent, further exacerbating its losses.
4. This court directed that the application be canvassed by way of the written submissions. None of the parties had filed their written submissions by the time of writing this ruling. Be that as it may, I have considered the application and the replying affidavit of the respondent. I am of the view that the issue for determination is whether the appellant/applicant is entitled to stay of execution pending the appeal.
5. Order 42, Rule 6 (1) and (2) of the Civil Procedure Rules provides as follows:-
  - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) 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.”
6. There are three conditions for grant of stay order pending Appeal under Order 42 Rule 6 (2) of the Civil Procedure Rules to which:-
  - a. The court is satisfied that substantial loss may result to the applicant unless stay of execution is ordered;
  - b. The application is brought without undue delay and
  - c. 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.



7. The purpose of stay of execution is to preserve the substratum of the case. In the case of Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi), the court held that:-

“The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory”.

8. While the court is keen to ensure that the subject matter is preserved, the appellant/applicant must satisfy the conditions prescribed under Order 42 Rule 6 of the Civil Procedure Rules. In this case, it is not disputed that the application has been brought without delay. In satisfying the other conditions necessary for the grant of these orders, the appellant/applicant simply stated that if stay is not granted, he will suffer substantial loss. He did not bother to elaborate further on this issue, and he largely dwelt on the substance of the appeal. It was not shown the actual loss to be suffered if the orders sought are not granted. However arguable the grounds of appeal are, as it is the case here, stay of execution is not automatic. In fact, it is a lawful process entitled to a successful party in any litigation. There was need to demonstrate the loss, but that was not done. The appellant/applicant further stated that he is willing to abide and give security for costs, and the same was left to the court to decide.

9. In my humble view, I find that the appellant/applicant has failed to meet the conditions necessary for the stay of execution. The notice of motion dated 17<sup>th</sup> March, 2025 is thus dismissed. Costs abide the outcome of the pending appeal.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 10<sup>TH</sup> DAY OF JULY, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

10/07/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kirwa for the Respondent

Mr. Aloo for the Appellant – absent

