



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tangwar t/a Waridi Store v Rotich (Environment and Land Appeal  
E010 of 2025) [2025] KEELC 6094 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6094 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E010 OF 2025**

**CK YANO, J**

**SEPTEMBER 18, 2025**

**BETWEEN**

**ROSE JEPTOO TANGWAR T/A WARIDI STORE ..... APPLICANT**

**AND**

**WINNIE JEPKOSGEI ROTICH ..... RESPONDENT**

**RULING**

1. Vide a Notice of Motion dated 12<sup>th</sup> March, 2025 and filed under certificate of urgency, the Appellant/Applicant sought the following orders: -
  1. Spent.
  2. Spent.
  3. That the court be pleased to issue an injunction restraining the respondent from evicting the appellant from the business premises known as Eldoret Municipality/ Block 6 – Lockup Shop No. 026 following the ruling delivered in Eldoret BPRT No. E061 of 2023 – Rose Jeptoo Tangwar T/A Waridi Store vs Winnie Jepkosgei Rotich which dismissed her reference, pending the hearing and determination of the Appeal.
  4. That the costs of this application be provided for.
2. The application is based on the 5 grounds on the face of the application and on the Appellant’s Supporting Affidavit sworn on even date.
3. She explained that she filed a reference at the Business Premises Rent Tribunal sometimes on 15.4.2023, opposing the notice of termination and/or alteration of terms and conditions of tenancy on the land parcel known as Eldoret Municipality/ Block No. 6 – Lockup Shop No. 026 issued by the Respondent. However, efforts to fix the suit for hearing were not successful.



4. She further deponed that the respondent entered appearance on 13/8/2024, filed a notice of appointment and contemporaneously, an application seeking the dismissal of the reference and that the appellant (tenant) render a vacant possession of the suit premises or be evicted.
5. The respondent's application dated 13/08/2024 was heard and determined vide a ruling by Hon. Mike Makori, a Member of the Business Premises Rent Tribunal. The effect of the said ruling was to allow the application and dismiss the appellant's reference.
6. It is her contention that unless an order of injunction is granted in respect to the ruling in Eldoret BPRT No. E061 of 2023, that the appeal is at risk of being rendered nugatory and that the respondent will be at liberty to evict her from the premises.
7. She maintained that the grounds of appeal constitute a sufficient cause to warrant the grant of an order of injunction and that no harm or prejudice will be occasioned upon the respondent if the orders sought are granted.
8. She also averred that she stands to suffer substantial loss as she will lose her business premises that is located in a strategic location and that she has operated for a while.
9. In conclusion, she deponed that the application has been filed without unreasonable delay and urged the court to allow the application as prayed.
10. On a perusal of the court record, I have not seen any response filed by the respondent with regards to the instant application. The application was therefore not opposed.
11. When the application came up for interpartes hearing of the present application, Mr. Mogambi for the Appellant informed the court that the application was served upon the respondent on the 18.03.2025 but no response had been filed. He therefore sought a ruling date for the said application.

#### **Analysis and Determination:**

12. I have critically looked at the application and the grounds therein, the affidavit in support together with the annexures thereto in totality and it is my considered view that the only issue arising for determination is whether the Applicant has met the requirements for the grant of a temporary order of injunction as sought.
13. Before delving on the merits of the application, it is important to point out that even though the applicant herein is seeking an order of temporary injunction, her application has been premised on the provisions Order 42 Rule 6 (6) of the Civil Procedure Rules, which addresses the issue on stay, together with all other enabling provisions of the law.
14. The need to cite the relevant and specific provisions of law with regard to applications and the cause of action and outlining with details and precision the prayers sought cannot be overemphasized. However, this court is guided by the decision in the case of Republic v Anti-Counterfeit Agency & 2 others Ex-Parte Surgippharm Limited [2014] eKLR where the court stated as follows: -

“.... in light of the provisions of Article 159(2)(d) of the Constitution the mere fact that a party cites the wrong provisions of the law ought not to deprive the Court of a jurisdiction where such jurisdiction exists...”
15. Thus, pursuant to the provisions of Article of 159 (2) (d) of the Constitution, it is my considered view that citing the wrong provisions of law is not fatal to an application and this court is under a duty to determine the said application on merit and under the correct provision of the law.



16. In this case, the prayers sought are in the nature of temporary injunction, pending the hearing and determination of the appeal under Order 40 Rule 1 of the Civil Procedure Rules which provides as follows: -
1. Where in any suit it is proved by affidavit or otherwise: -
    - (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree;
    - (b) .....,  
 the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
17. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 also empowers this court to grant interim preservation orders; including an interim order of injunction as sought herein.
18. In the celebrated case of *Giella vs Cassman Brown and Co. Ltd* [1973] EA. 358 at 360, the court outlined the 3 elements to be proved for the grant of temporary injunction and held as follows: -
- a). where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;
  - b). He will suffer irreparable harm/injury which cannot be adequately compensated by damages;
  - c). Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.
19. These 3 elements as outlined above are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. The existence of one element alone does not automatically entitle an applicant to an order of injunction without considering the other elements. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.
20. On whether the applicant has established a Prima Facie case which raises arguable and triable issues with a probability of success, the Court of Appeal in *Mrao Ltd vs. First American Bank of Kenya and 2 Others* (2003) KLR 125 explained what amounts to a prima facie case and stated as follows:
- “a prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
21. The applicant’s claim is premised on the dismissal of her Reference filed in the Business Premises and Rent Tribunal, which sought to oppose the notice of termination and/or alterations of the terms and conditions of tenancy from Eldoret Municipality/Block No. 6 – Lockup Shop No. 026.



22. It is her contention that unless an order of injunction is granted in respect to the ruling of the BPRT, the appeal is at risk of being rendered nugatory and that the Respondent will be at liberty to evict her from the premises.
23. It is further her claim that she stands to suffer substantial loss as she will lose her business premises that is located at a strategic location.
24. The application was not opposed. However, this court acknowledges the need to determine an application on merit even where the same is unopposed. This was the position in the case of *Gichinga Kibutha...Vs...Caroline Nduku* (2018) eKLR, where the Court held that: -

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
25. The undisputed facts of the case herein are that the respondent is the registered owner of the suit premises while the applicant/appellant is in occupation and use of the said premises as a tenant and on the basis of a tenancy agreement.
26. Even though no such tenancy agreement has been availed before this court, from the annexure marked “D” in the Supporting Affidavit, being a copy of the Application in the Tribunal seeking among other orders, for the applicant to render a physical possession of the suit premises and that the tenancy had been terminated. It was averred in the affidavit in support of the said application that the tenancy expired on 6/8/2024.
27. The question that therefore follows, is whether an order of temporary injunction, restraining the respondent from evicting the applicant from the business premises can issue in light of the fact that the tenancy agreement has since expired by effluxion of time.
28. The applicant herein failed to make a full and candid disclosure of all material facts in order to benefit from the equitable relief of an injunction sought, particularly on the status and/or expiry of the tenancy agreement.
29. Be that as it may, it is my considered opinion that upon expiry of the term of the tenancy, the contractual relationship between the parties is deemed to have ended. It is common ground that the rights and/or interests, if any, that inhered in the Applicant have also since extinguished and the applicant has no legitimate basis to remain in occupation of the suit premises.
30. The Court of Appeal in the case of *Naftali Ruthi Kinyua v Patrick Thuita Gachure & another* [2015] eKLR stated that:

“With reference to the establishment of a prima facie case, Lord Diplock in the case of *American Cyanamid vs Ethicon Limited* [1975] AC 396 stated thus,

“If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant’s proposed activities that is the end of any claim to interlocutory relief.”
31. Guided by the above decision, this court finds that the applicant has failed to demonstrate that she has a prima facie case against the respondent. Consequently, the remaining two elements fall by the way and that is the end of the applicant’s claim to interlocutory relief.
32. In view of the foregoing, I find that the Notice of Motion Application dated 20<sup>th</sup> February, 2025 is not merited and is hereby dismissed with no orders as to costs.



33. It is so ordered.

**DATED, SIGNED AND DELIVERED IN ELDORET THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. C. K. YANO**

**JUDGE**

Ruling delivered in the presence of: -

Mr. Mogambi for the Appellant.

No appearance for the Respondent.

Court Assistant – Laban

