



Wonder Rose Limited & another v Kiende & another (Environment & Land Case E087 of 2024) [2024] KEELC 6586 (KLR) (8 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6586 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E087 OF 2024**

**JA MOGENI, J
OCTOBER 8, 2024**

BETWEEN

WONDER ROSE LIMITED 1ST APPELLANT

FREDRICK OUYA 2ND APPELLANT

AND

NELLY KIENDE 1ST RESPONDENT

ALEX MOSIERE 2ND RESPONDENT

(Being an appeal against the orders of Mr Hillary Korir Chairman Rent Tribunal in RRC E586 of 2024 issue on 5th and 9th April 2024)

RULING

1. For this ruling is a Notice of Motion Application dated 28/06/2024 where the applicant seeks orders among others that pending the hearing and determination of the appeal there be a stay of execution of the ex-parte orders issued on 5th and 9th April 2024. At the same time the applicant seeks stay of proceedings at the Rent Tribunal pending the hearing and determination of Appeal.
2. The application is unopposed the respondents did not file any pleadings in response.
3. That the tribunal has issued ex parte orders without hearing the Appellants or reference to application filed by the appellants. That the Chairman erred in law and fact issuing final orders ex parte without hearing the applicants. This is the subject matter of the present appeal.
4. The applicant avers that Nelly Kiende the respondent is a former tenant who was issued with 30 days notice of termination of tenancy on 23rd February 2024. That the tenancy relationship between the parties ended at the expiry of the 30 days notice.



5. That the complainant/Respondent obtained final ex parte orders issued on 25th April 2024 by concealment of facts. That the Tribunal has continued to issue orders while the tenant has complied with termination notice and vacated the premises.
6. The Court should always lean towards letting parties ventilate their disputes. When a Court finally renders its determination over any dispute submitted to it to resolve, either party ought to feel they had their day in Court even if the decision might not favour them. An ex parte hearing therefore deprives a party of this right and should only be conducted in exceptional cases where it is plain and clear that the defendant was properly served but failed and or ignored to attend Court. In an application to set aside an ex parte hearing the Court ought to listen to what explanation or excuse the applicant has that prevented them from attending Court. If found reasonable, the application ought to be allowed.
7. Being an appellate Court, the function of this Courts is to look afresh at the evidence and arrive at its own conclusion.
8. Thus the applicant has approached this court seeking to set aside the ex parte decisions of the Tribunal. The applicant intends that the Court considers the application seeking to set aside the ex parte hearing and judgment.
9. The principles for setting aside exparte judgment as held in *Shah Versus Mbogo & Another* (1967) EA 470 are that:
 - a. Either the defendant was not probably served with the summons or
 - b. That the defendant failed to appear at the hearing due to sufficient cause.
10. If the Court were to come to conclusion that the application to set aside the ex parte hearing should be allowed, it would be purely academic if execution had been allowed to proceed.
11. In the circumstances the Court will allow the application and grant the appellant stay of execution of final ex parte orders issued on 25th April 2024 pending hearing and determination of the present Appeal.
12. I have read and noted that this is an appeal that can benefit from an out of court settlement noting that the respondents despite being served did not file any responses to the application.
13. Be as it may parties are urged to fast track the hearing and disposal of the Appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2024.

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MOGENI J

JUDGE

In the virtual presence of:-

Mr. Ngari for Appellant/Applicant

No appearance for Respondent

Caroline Sagina - Court Assistant

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**MOGENI J
JUDGE**

