



**Njeru v Sialala (Land Case Appeal 11 of 2024)  
[2024] KEELC 7377 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7377 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE APPEAL 11 OF 2024  
LN MBUGUA, J  
NOVEMBER 6, 2024**

**BETWEEN**

**MARY W NJERU ..... APPELLANT**

**AND**

**ALEXANDER KIPAISATU SIALALA ..... RESPONDENT**

**RULING**

1. Before me is the Plaintiff's Notice of Motion dated 27.9.2024 seeking orders that;
  - i. This application be certified as urgent and heard on priority basis.
  - ii. That the court issues a stay of execution of the order of the business and rent tribunal dated 29<sup>th</sup> August 2024 in case No. BRT/E661/2023.
  - iii. That this honourable court permits me file as a pauper costs of the cause."
2. The grounds in support of the application are;
  - i. That A stay of execution of the ruling of the business premises tribunal dated 29.8.2024 issued in tribunal case No. BPRT /E661/2023 be set aside to maintain the status quo of the subject matter dispute.
  - ii. That interim orders issues against the respondent through his employee and or agents from unlawfully evicting me.
  - iii. That the nature of the urgency is that the judgment issued vide case BPRT/E661 of 2023 which directed that the tenant should render possession within 30 days will be effected as from 27.9.2024.
  - iv. That if the said order is executed I will be rendered with no source income and I will be rendered completely homeless.



- v. That the business premises have been vandalized and I have attached photo evidence to prove the same.
  - vi. That the court had directed vide case no BPRT/E661/2023 that an inspection be carried and the same was never complied with by the business and rent tribunal.
  - vii. That the execution of the order will cause substantial loss to the applicant and her to the risk of destitution and a life of indignity.
  - viii. That the appeal court had issued an order for a mention date on 8.10.2023 apprehension is that the respondent will have evicted me by then since the same is effected by 27.9.2024 and defeat the purpose of the Appeal.”
3. In her submissions (the date is not discernible), she reiterates the issues raised in her application. She adds that there was a tenancy between her and Alexander Kipaisatu Sialala from year 2020 to 2021, but the respondent, despite being aware that she was a tenant proceeded to evict her from the suit premises. She avers that there have been other cases such as Appeal no E413 and 905 of 2020.
  4. In opposition thereof, the respondent filed grounds of opposition dated 16.10.2024 stating that the applicant is no longer a tenant of the respondent and that the applicant did not comply with this courts orders on service.
  5. In his submissions dated 30.10.2024, the respondent contends that the applicant has not occupied the suit premises since the initiation of the tribunal case in year 2023, and that there is no tenancy relationship between the two parties, hence the application should be dismissed.
  6. I have considered all the arguments raised herein. The applicant prays that the decision of the tribunal in the case BPRT NO. E661 OF 2023 be stayed and she be allowed to file a pauper suit.
  7. I discern that the suit premises were once owned by one Alexander Kipaisatu Sialala (hereinafter Sialala), who apparently sold the said premises to one Thomas Sankei Kagoshi (hereinafter Thomas) the current respondent. I also find that the applicant has had a furry of litigations with both Sialala and Thomas. And vide the judgment of the tribunal in BPRT CASE NO 661 OF 2023 dated 29.8.2024, the applicant was to be evicted from the suit premises. No appeal has been filed yet in respect of the aforementioned decision. I believe that the prayer to file the pauper suit refers to the filing of an appeal.
  8. There are however points for consideration which renders this miscellaneous suit dead on arrival.
  9. Firstly, I note that there is no evidence of a tenancy relationship between the applicant and Thomas. Herself, she admits that the tenancy was between her and Sialala, running for two years as per an agreement dated 1.1.2020, thus her claim to be allowed to stay in the suit premises is out rightly unfounded. As rightly pointed out by the tribunal, any damages occasioned to her during the tenancy period ought to be pursued against Sialala.
  10. Secondly, and as discerned from the documents availed by the applicant, she did pursue her claim against Sialala in the BPRT Case No E413 of 2023 where a decision was given on 9.1.2023. The applicant then approached this court vide a Miscellaneous Suit No 33/ 2023 seeking orders to file a pauper suit. And vide the orders of Judge Mogeni given on 6.7.2023, her prayer was allowed. There is a document filed in this matter titled “Memorandum of appeal” dated 24.1.2023 where the applicant has sued Sialala challenging the orders in BPRT Case No E413 of 2023. I take it that this is the appeal that the applicant filed challenging the orders given in the BPRT Case No. 413 of 2023. The question I pose is; What is the fate of the said appeal suit. The applicant is guilty of material none disclosure for not giving information as to what has happened in the aforementioned appeal matter.



11. In the case of *In re Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR, the court had this to say in matters of none disclosure albeit in a succession case.

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”.

12. Thirdly, it is noted that the applicant is filing cases right left and center which in itself amounts to an abuse of the courts processes. It is apparent that despite suing Sialala in the BPRT Case No. E413 OF 2023, the applicant also sued Thomas in the BPRT Case No. E661 OF 2023. Another suit 905 of 2020 has also been mentioned, but the particulars of the case have not been given.

13. This far, I make reference to the case of *Republic v Paul Kihara Kariuki, Attorney General & 2 Others Ex parte Law Society of Kenya* [2020] eKLR, where the court stated that;

“Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process”

14. Fourthly, I find that the decision of the tribunal in BPRT Case No. E661 OF 2023 was delivered way back on 29.8.2024. The nature of the suit that the applicant desires to file has not been stated. If the applicant desired to challenge that decision of the tribunal by way of an appeal, then she ought to have made a prayer to lodge the said appeal out of time. She has not done so.

15. Fifthly the applicant seems to be banging in documents in court haphazardly. To this end, her substantive notice of motion bears the name of Alexander Kipaisaty Sialala as the respondent, while the Certificate of Urgency bears Sialalas name, which is then cancelled through shading and the name of Thomas Sankei Kagoshi has been written with a pen.

16. The sixth and final point to note is that the applicant has not complied with the court’s directions on the issue of service as directed on 4.10.2024. On that day, the court gave clear and self-executing directions to the effect that in the event of none compliance on the part of the applicant, her application was to stand as Dismissed. In particular, the court directed her to file her affidavits of services in the portal. She didn’t comply yet she is able to file so many other documents. None compliance with court’s orders attracts sanctions and in the case at hand, the applicant was notified of the sanction. Thus the self-executing orders took effect rendering her application null and void.

17. To this end, I make reference to the case of *Moschion v Mwangi (Environment and Land Case 350 of 2018)* [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling) where the court (Mbugua J), stated as follows in regard to the overriding objective set out under the [Civil Procedure Act](#);

“A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.”



18. I conclude that this suit was not filed in good faith and that the same amounts to an abuse of the courts processes. In the circumstances, the entire suit is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6th DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Mary Njeru for Appellant/Appellant

Martin Munguti for the Respondent

Court Assistant: Vena

