



**Bonkam Ventures & 6 others v Kirika & another (Environment and Land Appeal 16 of 2023) [2023] KEELC 21285 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21285 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL 16 OF 2023  
A OMBWAYO, J  
NOVEMBER 3, 2023**

**BETWEEN**

**BONKAM VENTURES & 6 OTHERS ..... APPLICANT**

**AND**

**PETER KIMANI KIRIKA ..... 1<sup>ST</sup> RESPONDENT**

**PYRETHRUM PROCESSING CO LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Bonkam Ventures and 6 others (hereinafter referred to as the applicant) have come to this court with an application dated 4<sup>th</sup> October 2023 praying that the Court be pleased to grant stay of execution of the ruling of the Business Premises and Rent Tribunal delivered on 27<sup>th</sup> August 2023 in Nakuru Business Premises Rent Tribunal Case No. E016 of 2022 and all consequential orders emanating thereof pending the hearing and determination of the Appellants' Appeal.
2. The applicants further pray that this honorable Court be pleased to grant the Applicants/intended Appellant leave to file a Memorandum of Appeal out of time and the Memorandum of Appeal filed herein be deemed to have been filed on time. Such other additional, suitable and or alternative orders be made as are just and expedient in all circumstances of the case and this Application considered.
3. The application is based on grounds that the Tribunal made adverse orders against the applicant hence they are desirous to appeal. The orders were made on 12<sup>th</sup> July 2023 but they became aware on 5<sup>th</sup> September 2023. From the court record the ruling was delivered on 28<sup>th</sup> July 2023 but the order is dated 12<sup>th</sup> July 2023. The parties were not served with the ruling notice which is mandatory and the tribunal had informed parties that the ruling was to be delivered on notice. The applicants are aggrieved with the ruling and instituted the appeal:
4. The Appellants/Applicants will be highly prejudiced if stay of execution is not granted and the said appeal succeeds thereafter.



5. The Tribunal erred both in Law and in fact in failing to appreciate that it lacked jurisdiction to entertain this matter as the lease between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent was for 20 years therefore outstay the jurisdiction of the Tribunal.
6. Further, the learned Tribunal erred in Law in failing to take judicial notice that the 2<sup>nd</sup> Respondent herein being the Pyrethrum Processing Co. Kenya is state Corporation which did not need a "CR12" to confirm the same.
7. This application has been brought to this Court expeditiously and without any delay whatsoever and that the intended appeal herein has overwhelming chances of success.
8. The Respondent will suffer no prejudice if this Application was to be allowed while the Applicants will suffer substantial loss if this Application was to be denied.
9. It is within the wider interest of Justice that the temporary injunction is granted herein
10. The Applicants are willing to abide by such reasonable stay terms as the court may order and in particular to deposit half of the decretal sum in court. The application is supported by the affidavit of Isaac Njenga Kinyanjui. The application is not opposed by the respondents. The allegations in the in the affidavit are not controverted.
11. I have considered the court of appeal authority in Civil Appeal No. 95 of 2016 in the case of *Daniel Kibet Mutai & 9 others v Attorney General [2019]* eKLR where the court cited with authority the case of *Peter O. Nyakundi & 68 others v Principal Secretary, State Department of Planning, Ministry of Devolution and Planning & another [2016]* eKLR which stated
 

“As stated earlier the Respondents did not file any Replying Affidavit to challenge and/or controvert the sworn averment by the Petitioners that they were victims of the post-election violence. Ground of Opposition which were filed are only deemed to address issues of law. They are general averments and cannot amount to a proper or valid denial of allegations made on oath.
35. Further in the case of *Kennedy Otieno Odiyo & 12 Others v Kenya Electricity Generating Company Limited [2010]* eKLR the court held as follows:-
 

The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the applicant in its supporting affidavit. Thus what was deponed to was not countered nor rebutted by the respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant’s supporting affidavit, means that the respondents have no claim against the applicant”.
12. I do find that the application is merited and I do grant a stay of execution of the ruling of the Business Premises and Rent Tribunal delivered on 27<sup>th</sup> August 2023 in Nakuru Business Premises Rent Tribunal Case No. E016 of 2022 and all consequential orders emanating thereof pending the hearing and determination of the Appellants' Appeal.
13. Further, I do grant the Applicants/intended Appellant leave to file a Memorandum of Appeal out of time and the Memorandum of Appeal be filed within the next 10 days. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 3RD DAY OF NOVEMBER, 2023.**



**A .O. OMBWAYO**  
**JUDGE**

