



Inca Block Limited & 2 others v Daniel (Environment and Land Appeal E109 of 2024) [2025] KEELC 4019 (KLR) (16 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4019 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E109 OF 2024**

**TW MURIGI, J
MAY 16, 2025**

BETWEEN

**INCA BLOCK LIMITED 1ST APPELLANT
JANE MUGO 2ND APPELLANT
MORAN AUCTIONEERS 3RD APPELLANT**

AND

CLAIRE DANIEL RESPONDENT

(Being an appeal arising from orders issued on 25/7/2024 by Hon. Janice Ikingi (Deputy Chairperson) in RRC E529 of 2024 at the Rent Restriction Tribunal in Nairobi.)

RULING

1. Before me for determination is the Notice of Motion dated 29th July 2024 in which the Appellants seek the following orders:
 - a. Spent.
 - b. Spent.
 - c. There be a stay of the orders issued on 25th July 2024 in RRC E259 of 2024 pending the hearing and determination of this appeal.
 - d. Spent.
 - e. The Court grants a stay of proceedings in RRC E529 of 2024 pending the hearing and determination of this appeal.
 - f. Costs of the application be provided for.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit of James Mbogo, sworn on even date.

The Applicants Case

3. The deponent averred that the Respondent filed a suit before the Tribunal alleging closure of her premises by the landlord. That despite having filed a preliminary objection challenging the jurisdiction of the Tribunal, the Tribunal went ahead and gave the Respondent re-entry orders before determining the preliminary objection. He averred that the Tribunal gave further orders when the Appellants failed to comply with the initial orders. In conclusion the deponent stated that the Appellants have no desire to continue a tenancy relationship with the Respondent.
4. Though duly served, the Respondent did not file any response to the application.
5. The application was canvassed by way of written submission.

The Appellants/applicants' submissions

6. The Appellants filed their submissions dated 22nd January 2025. On behalf of the Applicants, Counsel outlined the following issues for the court's determination: -
 - a. Whether the Appellants/Applicants application is merited and consequently if the orders sought should be granted.
 - b) Who bears the costs of the application.
7. On the first issue, Counsel relied on Article 25 of *the Constitution*, Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6 of the Civil Procedure Rules and the cases of Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR), Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd (in liquidation) [2004] 2 EA 331, James Wangalwa & another v Agnes Naliaka Cheseto [2012] eKLR, First National Finance Bank Limited v Universal Apparels (EPZ) Ltd & 2 others [2017] KEHC 10060 (KLR) and RWW v EKW [2019] eKLR to submit that the Applicants have satisfied the conditions for the grant of stay of execution pending appeal.
8. Counsel further submitted that the Appeal herein raises the question of jurisdiction of the Tribunal to hear and determine the matter. It was further submitted that the issue of jurisdiction ought to be determined before the Tribunal issues any further orders.
9. In applying the principles for stay of execution pending appeal, Counsel urged the court to grant orders of stay of proceedings pending the hearing and determination of this appeal.
10. In conclusion Counsel urged the court to allow the application with costs.

Analysis And Determination

11. Having considered the application and the submissions by the Appellants, the only issue that arises for determination is whether the Appellants are entitled to the orders sought.
12. Order 42 Rule 6 of the Civil Procedure Rules provides:
 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.
13. In considering an application for stay of execution, I am guided by the case of *Butt Vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal gave the following guidelines;
- “The power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. The general principle in granting or refusing a stay is; if there is no overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s decision. A judge should not refuse stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the Applicants at the end of the proceedings. The court in exercise of its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.”
14. The grant of an order of stay of execution is a discretionary one. In the case of *RWW Vs EKW* (2019) eKLR the Court held that;
- “...the purpose of an application for stay of execution pending an appeal is to preserve the subject in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and The appeal if successful is not rendered nugatory. However, in doing so the court should weigh the right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of damages.”
15. The Court is therefore called upon to balance both the rights of the successful party so as not to hinder him from his fruits of judgment and those of the Appellant whose Appeal may succeed and be rendered nugatory if stay of execution is not granted.
16. 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.”
17. On the first condition of proving that substantial loss may result unless stay orders are granted, the Applicants should not only state that they are likely to suffer substantial loss, they must prove that they will suffer substantial loss if stay orders are not granted.



18. In so finding, I am persuaded by the decision in the case of Charles Wahome Gethi Vs Angela Wairimu Gethi (2008) eKLR where the Court of Appeal held that;

“...it is not enough for the Applicants to say that they live or reside on the suit land and they will suffer substantial loss. The Applicants must go further and show the substantial loss that the Applicants stand to suffer if the Respondent execute the decree in this suit against them.”

19. What amounts to substantial loss was expressed by the Court of Appeal in the case of Mukuma Vs Abuoga (1988) KLR where the Court held that;

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.

20. It is the Appellants case that they have leased the suit property to another tenant and therefore the orders of re-entry would be detrimental to their business. The Appellants contended that their appeal will be rendered nugatory if the orders sought are not granted. The Appellants have filed a preliminary objection challenging the jurisdiction of the Tribunal. From the foregoing, I find that the Appellants have demonstrated that they will suffer irreparable loss if the stay orders are not granted.

21. In an application for stay of execution pending Appeal, an Applicant must also satisfy the Court that the application has been made without unreasonable delay. It is not in dispute that order was made on 25th July, 2024. The present application was filed in Court on 29th July, 2024. I find that the application was filed without undue delay.

22. On the last condition as to the provision of security for costs, Order 42 Rule 6 (2) (b) of the Civil Procedure Rules is couched in mandatory terms to the effect that the Applicant must furnish security for the performance of the order or decree. In the case of Arun C Sharma Vs Ashana Rakundalia T/A Raikundalia & Co. Advocates & 2 Others (2014) eKLR, the court held that;

“The purpose of the security under Order 42 is to guarantee due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor....civil process is quite different because in civil process the judgment is like a debt hence the applicant become and are judgment debtors in relation to the respondent. That is why any security given under order 42 rule 6 of the civil procedure rules acts as a security for the performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”

23. Similarly, in the case of Focin Motorcycle Co. Limited v Ann Wambui Wangui & another [2018] KEHC 8358 (KLR) stated as follows concerning security for stay:

Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay

24. The Applicants have expressed their willingness to provide security as directed by the Court.



25. In the end, I find that the application dated 29th July 2024 is merited and the same is hereby allowed in the following terms;
- i. Stay of execution of the order issued on 25th July 2024 in RRC E259 of 2024 be and is hereby granted pending the hearing and determination of this Appeal.
 - ii. Stay of proceedings in RRC E529 of 2024 be and is hereby granted pending the hearing and determination of this appeal.
 - iii. The Applicant shall deposit Kshs. 100,000/= as security for costs in court within 45 days from the date of delivery of this ruling in default the stay orders shall automatically lapse.
 - iv. Each party to bear its own costs.

RULING DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF MAY 2025

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T. MURIGI

JUDGE

In The Presence Of:

Absence of Parties

Ahmed – Court Assistant

