



**Maina v Zubedi & 4 others (Miscellaneous Application
E108 of 2025) [2025] KEHC 10732 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E108 OF 2025**

JM NANG'EA, J

JULY 9, 2025

BETWEEN

DAVID MWANGI MAINA PLAINTIFF

AND

ZUBEDA SAID ZUBEDI 1ST DEFENDANT

JAMES W KARANJA 2ND DEFENDANT

MEDI AID PHARMACY 3RD DEFENDANT

NANCY WANJIRU 4TH DEFENDANT

JOHN CHEGE KARIUKI 5TH DEFENDANT

RULING

1. The Applicant prays for these reliefs as per Notice of Motion dated 14th April 2025;-
 1. Spent.
 2. Spent.
 3. The court be pleased to grant a stay of execution against the Judgment delivered by Hon. Gakuhi Chege and Hon. Joyce Osodo on the 21st March, 2025 at Nakuru in BPRRT case No. E014 of 2024 pending hearing and determination of the appeal.
 4. That this court be pleased to grant the applicant leave to file notice of appeal out of time.
 5. Any other orders that meets the end of justice.
2. The application is supported by affidavit evidence of the Applicant. He deposes inter alia that he is challenging a decision of the Business Premises Rent Tribunal ("The Tribunal") that allowed the 1st Respondent who is his landlord to evict him from the rented premises. At the time of bringing this



application the impugned decision/order had not yet been published in the court's online portal for access to the parties. The Applicant, however, states that he was able to obtain "a screen shot" copy of the judgement for the purpose of this application.

3. The Applicant pleads that if stay of execution is not ordered, his intended appeal would be rendered nugatory in the event he succeeds.
4. The Applicant further contends that he was not heard by the Tribunal before the eviction order was issued, in breach of the well established principles of natural justice and specifically in contravention of Articles 27, 48 and 50 of *the Constitution*.
5. The Applicant therefore strongly disagrees with the Tribunal for purported violation of his constitutional rights, particularly the right of hearing, hence his intention to appeal.
6. The 1st Respondent opposes the application by means of preliminary objection and her affidavit in reply. He briefly avers in the affidavit on advice of his Legal Counsel that this court is bereft of jurisdiction for reason that in law an appeal from a decision of the Tribunal lies to the Environment and Land Court and not to this court.
7. The 1st Respondent further contends that no sufficient cause is demonstrated to merit stay of execution and /or grant of leave to appeal out of time as prayed.

Applicant's Submissions

8. Reference is made to *Butt vs Rent Restriction Tribunal (1979)* in which the Court of Appeal observed that stay of execution pending appeal is a discretionary remedy and the discretion is exercised judiciously so as not to render the intended appeal nugatory.
9. The Applicant questions the constitutionality and/or validity of Tribunal proceedings intended to be appealed. It is pointed out that the High Court has unlimited civil jurisdiction including over tribunals. According to the Applicant, the intended Appeal is not over dispute as to rent but legality of proceedings before the Tribunal.

1st Respondent's Submissions

10. The 1st Respondent's Preliminary Objection is urged as follows;-
That the court lacks jurisdiction by dint of Section 15 of the Landlord and Tenant (shops, hotels & Catering Establishments) Act which enacts as hereunder;

"Any party aggrieved by the decision of a Tribunal may, within thirty days of the date of the decision, or such extended period as the Tribunal may allow, appeal to the Environment and Land Court."
11. Reliance is further placed on the famous case of *Owners of Motor Vessel Lilian "s" vs Caltex Oil (Kenya) Ltd. (1989) KLR* where it was counselled that where the court lacks Jurisdiction it should not take any further step in the matter.
12. The 1st Respondent continues to submit that where there is a clear procedure for redress of a particular grievance prescribed by *the Constitution* or an Act of Parliament that procedure should be strictly followed as exhorted in the case of *the Speaker of National Assembly vs Njenga Karume (2008) 1 KLR 425* cited by Counsel.



13. The 1st Respondent therefore attacks this application as vexatious. I am referred to case law in *Muchanga Investment Ltd. vs Safaris Unlimited (Africa) & 2 Others* (2009) eKR for the definition of vexatious proceedings as follows;

“A vexatious proceeding is one which has no reasonable or probable cause harasses or annoys the opponent, and is brought to vindicate rights but not to oppress.”

14. According to the 1st Respondent the application is essentially disguised as a constitutional petition in an appeal which is impermissible as per the Court of Appela’s decision in *Daniel N. Mugendi vs Kenyatta University & Others* (2013) eKLR where the Court observed ;-

“If parties file claims before the wrong court, the courts should not stretch their judisdictional reach in the name of enforcement of constitutional rights. Proper procedure must be followed.”

15. Counsel also cite the famous *Anarit Karmi Njeru vs The Republic* (1979) eKLR alleged constitution rights violation must be stated with precision.

16. The other Respondents did not put in replies to the application.

The Court’s Rendition

17. By dint of Section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* cited and relied upon by the 1st Respondent’s Advocates, it is expressly enacted that an appeal from the Tribunal lies to the Environment and Land Court. As held in the case of the Speaker of the National Assembly supra cited by the 1st Respondent, where *the Constitution* or an Act of Parliament prescribes a particular procedure for redress of a grievance that procedure ought to be followed and exhausted. In *Samwel Kamau & Another vs Kenya Commercial Bank & Others* [Application No. 2 of 2011] 92012 KESC (KLR) it was held that the court derives jurisdiction either from *the Constitution* or legislation or both. It cannot confer jurisdiction on itself.

18. The above is the settled jurisprudence as reiterated in many other cases including *Swara Acacia Lodge vs Office of the Data Protection Commission & Another* (Application E072 OF 2024) [2025] KEHC (KLR) and *Cares Tech Limited vs Office of the Data Protection Commissioner* (2024) KEHC 12 3833 (KLR).

19. The germane issue for determination, therefore, is whether this court had jurisdiction to entertain the intended appeal. I must agree with the 1st Respondent that I have no jurisdiction in light of the provisions of Section 15 of the Act supra. I further concur with the 1st Respondent that the Applicant appears to argue about violation of his constitutional rights without instituting a Constitutional Petition for hearing and determination in accordance with applicable rules. The Applicant does not urge his application for leave to appeal out of time on the basis of the right governing principles.

20. The 1st Respondent’s Advocates rightfully submit on the authority of the famous case of *Anarita Karimi Njeru vs Republic* (1979) eKLR that alleged infringement of Constitutional rights in a properly filed Petition, should be stated with precision. That decision further requires that evidence proving the infringement must also be succinctly tendered for the opposite party to respond and enable proper evaluation and determination. As observed in the case of *Daniel N. Mugendi* supra referred to by the 1st Respondent, a Constitutional Petition ought to be brought before the right court.



21. For the above reasons and/or observations, I find that the Preliminary Point is properly taken and is sustained. Consequently, it is held that the court lacks jurisdiction to hear and determine the intended appeal and this application as well. I will not therefore determine the application on merits.
22. The application dated 14th April 2025 is accordingly struck out with costs to the 1st Respondent.

J.M NANG'EA , JUDGE.

****RULING DELIVERED VIRTUALLY AT NAKURU THIS 9TH DAY OF JULY, 2025**

In the presence of;

The Applicants Advocate, Absent

The 1st Respondent's Advocate, Mr Abuya

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

