



**Irungu v Gorasia (Civil Appeal E1241 of 2023)
[2024] KEHC 5623 (KLR) (Civ) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1241 OF 2023

AN ONGERI, J

MAY 20, 2024

BETWEEN

GRACE WAIRIMU IRUNGU APPELLANT

AND

RAMESHCHANDRA COVIND GORASIA RESPONDENT

*(Order for stay of execution made by the Rent Restriction Tribunal
in RRT Case No. E575 of 2021 issued on 9th November 2023)*

RULING

1. The appellant/applicant filed the notice of motion dated 16/11/2023 brought under Order 42 Rule 6 (1) and Order 40 Rule 2, Order 51 Rules 1 and 3 of the [Civil Procedure Rules](#), Sections 3 and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law seeking the following prayers;
 - i. This application be certified urgent and service be dispensed with in the first instance.
 - ii. This Honourable Court be pleased to issue an order for stay of execution of the order made by the Rent Restriction Tribunal in RRT Case No. E575 of 2021 issued on 9th November 2023 for the Appellant to vacate House No. E3, Taj Villas Estate Nairobi pending the hearing and determination this application.
 - iii. This Honourable Court be pleased to issue an order for stay of execution of the order made by the Rent Restriction Tribunal in RRT Case No. E575 of 2021 issued on 9th November 2023 for the Appellant to vacate House No. E3, Taj Villas Estate Nairobi pending the hearing and determination this appeal.
 - iv. This Honourable Court be pleased to issue an order restraining the Respondent, his servants, employees, and/or agents from increasing rent, evicting, harassing or in any way interfering



with the Appellant's possession of House No. E3, Taj Villas Estate, Nairobi pending the hearing and determination of this application;

- v. This Honourable Court be pleased to issue an order restraining the Respondent, his servants, employees, and/or agents from increasing rent, evicting, harassing or in any way interfering with the Appellant's possession of House No. E3, Taj Villas Estate, Nairobi pending the hearing and determination of this appeal;
 - vi. The Officer Commanding Spring Valley Police Station to ensure compliance with this Honourable Court's orders.
 - vii. Costs of this application be provided for.
2. The application is based on the following grounds;
- i. That on 9th November 2023, the Rent Restriction Tribunal made an order for the Appellant to vacate House No. E3, Taj Villas Nairobi within thirty (30) days.
 - ii. The Appellant/ Applicant is aggrieved by the entire ruling and all the orders issued by the Rent Restriction Tribunal on 9th November 2023 and has preferred an appeal before this Honourable Court.
 - iii. The Appellant/ Applicant's appeal is merited and has a high likelihood of success.
 - iv. In the event that this Honourable Court does not issue the orders sought in this application, the Appellant's appeal will be rendered nugatory.
 - v. If this Honourable Court does not issue the order for stay of execution, the Respondent may execute the Tribunal's order for the Appellant to grant vacant possession of House No. E3, Taj Villas, Nairobi and this will be highly prejudicial to the Appellant.
 - vi. The Appellant/Applicant is willing to abide by any reasonable order for security made by this Honourable Court.
3. The application is supported by the affidavit of Grace Wairimu Irungusworn on 16/11/2023 in which she deposed that the Rent Restriction Tribunal delivered a ruling on 9th November 2023 in RRT Case No. E575 of 2021 by which it made an order that she should vacate House No. E3, Taj Villas, Nairobi within thirty (30) day from November 9, 2023.
4. That she is aggrieved by the ruling and the order made by the Tribunal on November 9, 2023 and she has instructed her Advocates to lodge an appeal against the entire ruling and the orders made by the Rent Restriction Tribunal.
5. That she was advised by her advocates on record, which advice she believes to be true, that an appeal does not act as a stay of execution of the order appealed against. Therefore, she has filed this application seeking for an order for stay of execution of the order requiring me to vacate House No. E3, Taj Villas, Nairobi.
6. That the appeal filed against the ruling and orders of the Rent Restriction Tribunal is merited and has a high likelihood of success.
7. That she has always paid rent on time to the Respondent and she does not have any rent arrears or outstanding utility charges.



8. That she is apprehensive that if this Court does not issue the orders sought in the application, the Respondent might execute the order to evict her from House No. E3, Taj Villas, Nairobi before the appeal is heard and determined.
9. That if the order to evict her from House No. E3, Taj Villas, Nairobi is executed before the appeal is heard and determined, the same will be rendered nugatory.
10. That she also stands to suffer irreparable loss and damage if the Respondent is not restrained by way of injunction order from increasing rent, harassing her, evicting her or interfering with her possession of House No. E3, Taj Villas, Nairobi.
11. The respondents opposed the application dated 16/11/2023 and filed a replying affidavit sworn on 6/12/2023 by the respondent, Rameshchandra Covind Gorasia, as follows;
 - i. That I am the respondent and I am aware of the matters raised in the appeal, hence competent to swear this affidavit.
 - ii. That I have read, and had explained to me by my advocates thus understood the contents of the appeal dated 16th November 2013 and wish to state as follows in reply.
 - iii. That the appellant herein is a tenant to one of my property house No. E3, TAJ VILLAS, Nairobi (herein referred to as suit property)
 - iv. That indeed the rent restriction tribunal herein issued an order for the appellant to vacate the suit property within 30 days from the date of the ruling 9th November 2023 (annexed herein is a copy of the ruling dated 9th November 2023).
 - v. That in response to paragraph 3, of the supporting affidavit the appellant alleges being aggrieved by the ruling however she is not disclosing that she had refused to sign a tenancy agreement for rent since August 2021 and to pay the rent as per the agreement wherein the terms of the tenancy agreement had a rent increment of 5% after every lease term (annexed herein is a copy of the unsigned rent agreement).
 - vi. That I can confirm that the appellant as at October 2023, doesn't owe me anything however due to our many disagreements I no longer wish to have the appellant as a tenant because her tenancy agreement has long expired.
 - vii. That for purposes of ease of this court process, should the court allow the applicant's application, I think it is only fair that as the owner of the sit property in question, I should be given a say on what to do with the same hence my proposition which is as follows:
 - a. That pending the determination herein, the rent charged will be kshs.400,000 per month.
 - b. That if appellant is in opposition to the same, then she can do this matter freely when she is out of my property and will be at liberty to claim whatever she wants from me.
 - viii. That I wish to state that I have tried to cooperate with the appellant but the appellant has been difficult and I have reached a point where I am fed up with the appellant's antics as she is now misusing the court's resources and time.
 - ix. That the correct position is that the appellant has at all times refused to sign any tenancy agreement and pay the rent as per the new terms and hence I have the right to evict her from the suit property as per the rent restriction tribunal's ruling dated 9th November 2023.



- x. That the appellant will not suffer any irreparable loss or damage since she was given sufficient notice at the rent restriction tribunal and in any case if she vacates I will not charge/expect her to clear any pending rent arrears.
 - xi. That I swear this affidavit in full opposition to the stay execution application dated 16th November 2023.
 - xii. That given the above instance, I pray that this court upholds the existing order of the tribunal and to dismiss this application with costs.
 - xiii. That in addition to the above and with regard to the stubborn nature of the appellant, I pray that this court grants us an eviction and breaking order dated 11th December 2023 in case the appellant fails to vacate the suit property on 9th December 2023.
12. The applicant filed a further affidavit dated 22/4/2024. In it she deponed that she has been paying the sum of Kshs.220,000 to the respondent as monthly rent. The respondent sought to increase the rent to Kshs.231,000 per month thereby prompting the proceedings before the Rent Restriction Tribunal. Therefore, the increased rent amount is the sum of Kshs.231,000 not Kshs.400,000 as stated by the respondent.
13. She further averred that when the court gave the order of stay on 7/12/2023 on condition that she pay the increased rent amount she began to pay the respondent Kshs.231,000 per month in compliance with the court directions. The respondent first mentioned the sum of Kshs.400,000 at paragraph 7 of his replying affidavit sworn on 6/12/2023 this was after the court made the order for stay of execution on 7/12/2023
14. The parties filed submissions as follows; the applicant submitted that she is in occupation of the property and that the Rent Restriction Tribunal gave an order of eviction against her. The applicant contended that in the event that the court does not issue the order for stay of execution pending the hearing and determination of the appeal, the respondent will execute the order of eviction rendering the appellants appeal nugatory.
15. The applicant submitted that she has demonstrated that she is currently paying the increased amount to the respondent and therefore the respondent is not suffering any loss or damage while these proceedings are ongoing. Further, the proceedings before the Rent Restriction Tribunal have not been concluded since the main dispute has not been heard and determined. Upon the conclusion of the appeal herein the dispute will go back to the Rent Restriction Tribunal for hearing and determination.
16. The respondent alternatively submitted that the applicant is in contempt of the order of 13/12/2023 as she has failed to pay the rent increment of Kshs.400,000. The respondent indicated that the issue herein revolves around the determination of which party holds the authority to dictate the terms of rental increment within the context of property ownership rights.
17. The respondent argued that the applicant has been irregularly residing in the respondent's premises under no tenancy agreement since the previous agreement lapsed on 31/8/2021. The respondent contended that the applicant seeks to rely on the tenancy agreement's 5% annual increase which she consistently refused to execute. The respondent maintained that that there is no tenancy agreement in force between the parties and the landlord is at liberty to exercise his proprietary rights which include dictating the rent amount payable.
18. The respondent argued further that the issue of any rental increase was superseded from the moment the Tribunal ordered the applicant's immediate eviction on 9/11/2023, giving the applicant 30 days



to leave the premises. Consequently, it can be inferred that even after the stay of execution order was granted pending the hearing of the appeal, the Respondent is still keen on evicting the applicant from his property.

19. The respondent submitted that he is justified in asking for Kshs. 400,000 per month as rent. The applicant has stayed in the subject premise since 2016 with no rental increment of the 5% as was envisaged in the now lapsed Tenancy Agreement that the applicant refused to execute. She has only started paying the 5% increment after the orders issued by the court in December 2023. This would mean that the applicants rent has remained static since the year 2016 which does not make economic sense.
20. The respondent submitted that the applicant has been very callous and inconsiderate in her behavior and the respondent is at his wits end and prefers not to deal with the applicant anymore. He would rather have empty/vacant possession and peace of mind than a tenant who is difficult to deal with. Furthermore, an applicant seeking stay of execution is obliged to satisfy the conditions set out in Order 42 rule 6(2), it is only fair that the applicant should be ordered to pay rent of Kshs.400,000 as requested by the respondent.
21. The applicant filed a further affidavit dated 22/4/2024. In it she deponed that has been paying the sum of Kshs.220,000 to the respondent as monthly rent. The respondent sought to increase the rent to Kshs.231,000 per month thereby prompting the proceedings before the Rent Restriction Tribunal. Therefore, the increased rent amount is the sum of Kshs.231,000 not Kshs.400,000 as stated by the respondent.
22. She averred that when the court gave the order of stay on 7/12/2023 on condition that she pay the increased rent amount she began to pay the respondent Kshs.231,000 per month in compliance with the court directions. The respondent first mentioned the sum of Kshs.400,000 at paragraph 7 of his replying affidavit sworn on 6/12/2023 this was after the court made the order for stay of execution on 7/12/2023
23. The sole issue for determination in the application dated 16/11/2023 is whether the applicant is entitled to stay of eviction pending appeal.
24. The tribunal gave an eviction order against the applicant.
25. This court gave a temporary stay of eviction on condition that she pays the disputed rent.
26. This court clarified that the disputed rent is kshs.400,000/= per month.
27. The governing provision for stay of execution pending appeal is Order 40 Rule 6 which requires that a party deposits security for costs as a condition for stay of execution pending appeal.
28. Since the issue to be determined is whether the Tribunal was right in ordering the eviction of the appellant, I direct that the applicant/appellant pays the disputed rent pending appeal which amount is ksh.400,000/= per month.
29. Since the record of appeal has been filed, this appeal be and is hereby admitted for hearing before a single Judge of the High Court.
30. The appellant is granted 14 days to file a supplementary record of appeal since the one filed does not contain the proceedings of the tribunal.
31. The appellant also to file written submissions in the appeal within 14 days.
32. Thereafter the respondent to file and serve his written submissions within 14 days.



- 33. In the meantime, stay of execution is granted on condition that the appellant pays the disputed rent which is 400,000/= per month pending the hearing and determination of this appeal.
- 34. Mention on 20/6/2024 for compliance and a judgment date.
- 35. Failure to comply the order of stay pending appeal to be vacated.
- 36. The two rival applications dated 7/5/2024 and 10/5/2024 are held in abeyance pending the determination of this appeal.
- 37. The costs of this application to abide the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 20TH DAY OF MAY, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

