



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA NO E017 OF 2025

CAR WASH DEN LIMITED

(Suing through one of the Directors

SAMUEL KIMANI KARANJA..... APPELLANT

VERSUS

JOSEPH MWANGI NJOROGE1ST RESPONDENT

FRANCIS KARANJA NJOROGE..... 2ND RESPONDENT

STEPHEN GITHAIGA3RD RESPONDENT

RULING

1) This ruling is on the notice of motion dated 9-5-2025. The motion which is brought under **Order 40 rule 2 of the Civil Procedure Rules** and all other enabling provisions of law seeks one main order.

2. The Respondents and interested part, their servants or persons claiming through or under them be restrained by way of interim injunction from intermeddling with the tenancy comprising Plot No. Loc.11/Maragi/1193/01 in respect of the business premises known as Car Wash Bar and Restaurant at Mukuyu market, Kiharu, by evicting, terminating the tenancy, leasing, selling or alienating the premises pending further orders of this Court.

3. The costs of this application be borne by the Respondent.

2) The motion is based on five (5) grounds and is supported by an affidavit dated 9-5-2025 sworn by one of the Directors of the Appellant, Samuel Kimani Karanja. The gist of the motion is as follows. Firstly, the Appellants have a leasehold interest in the suit property which expires in July 2026. Secondly, the Appellant is in actual possession of the suit premises. Thirdly, in Murang'a CMC ELC Case No. E074/25, a ruling was delivered on 9-5-2025 which struck out the Appellant's application dated 9-10-2024. This striking out of the

Appellant's application was without regard to the fact that the Appellant carries on business on the suit premises which will be diminished if the Appellants are evicted from the premises. Thirdly, the lease agreement was between the Appellant and Respondents but on 12/11/24, there was change of ownership of the suit premises from the Respondents to the interested party.

- 3) The motion is opposed by Respondents and 3rd Respondent has sworn a replying affidavit dated 23-5-2025 in which he responds as follows. Firstly the Appellant filed a notice of motion in the lower court. It was dated 7-2-2025 and it challenged an eviction notice issued by the interested party to the Appellant. The said motion was dismissed on the ground that the interested party was not a substantive party. The instant application is therefore irregular, in breach of the rules of procedure and bad in law. Secondly, the Appellant has not demonstrated that the trial court erred in any manner in declining to grant the injunctive orders sought therein. Thirdly, there was a tenancy agreement between the Respondents and Duncan Muriuki Kaguuru, Samuel Kimani Karanja and Esther Wambui Kimori for a term of 5 years and 3 months from 26-7-2021 but none between the Respondents and the Appellant. The lease agreement permitted either party to terminate the tenancy by serving one(1) month notice. On 9-3-2024, the Respondents sold the suit property to the interested party who became the new proprietors of the same. The Appellants were duly informed vide a letter dated 174-2024 that the property had been sold to the interested party and they were required to hand over possession of the same on or before 31st May 2024. From 9-3-2024, the Respondents lost their capacity to deal with the suit property as proprietors. The current proprietor has not entered into any tenancy agreement with the Appellants and they have not paid any rent to it. No tenancy agreement exists between them. The Appellants were informed of the intended sale as early as October 2023 when the Respondents told them to seek alternative space to rent. Fourthly, the Appellants lodged a caution against the suit property but the County Government of Murang'a after considering the Respondents appeal lifted the caution and allowed the sale to proceed. The dispute was later escalated to the **Business Premises Rent Tribunal vide Misc Application No. E590/2024**. The Tribunal issued an interim injunction in favour of the Appellants but later dismissed the reference and

vacated the interim orders. The Appellants have used all efforts to frustrate the rights of the Respondents and the interested party. Fifthly, it has not been demonstrated that the sale of the suit property by the Respondents to the interested party was fraudulent and the title has already passed to the interested party. Equally, the interested party cannot be compelled to take over the Plaintiffs as its tenants against its will. For the above and other reasons, the Respondents pray for the dismissal of the motion dated 9-5-2025.

4) Counsel for the parties filed written submissions dated 18-7-2025 and 26-5-2025 respectively. The issues identified as follows.

- (i) Whether the interested party is a substantive party to the suit, and whether an interested party can be sued in their capacity as such and orders be issued against them.**
- (ii) Whether this court may on appeal against an order make final determination of facts before a judgment is rendered by the trial court.**
- (iii) Whether the Appellant has pleaded or demonstrated an error of facts or law which was allegedly committed by the trial court in rendering the impugned ruling.**
- (iv) Whether the Appellant has satisfied the conditions for granting of the injunction sought.**
- (v) Whether a case of stay of execution of the decree of the lower court has been made under Order 42 rule 6 of the Civil Procedure Rules.**

5) I have carefully considered the notice of motion dated 9-5-2025 in its entirety including the grounds, the affidavits, the annexures, the written submissions and the law cited therein. Before I consider the issues identified by the counsel for the parties, I wish to express a few of my thoughts.

- (i) If it is true that this dispute was heard by the Business Premises Rent Tribunal, could it also properly be within the jurisdiction of the Learned Senior Resident Magistrate?**
- (ii) Why was there no appeal against the orders of the Business Premises Rent Tribunal?**

(iii) **Did the Appellant disclose to the Senior Resident Magistrate that there was previous litigation before the Business Premises Rent Tribunal as required by Order 4 rule 1 (1) (f) which provides as follows.**

“ The plaint shall contain the following particulars –

(f) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the Plaintiff and the Defendant over the same subject matter and that the cause of action relates to the Plaintiff named in the plaint.”

The reason why I am entertaining these thoughts is that the Appellant did not swear a supplementary affidavit to counter the deposition about the tribunal suit.

- 6) Regarding the first issue, though I do not have all the facts of this case as I have not seen a record of appeal, prime facie, I find that an interested party is in the periphery of the dispute and does not play a central role. As a rule courts will not issue orders against interested parties except where such a party actively participates as a *de facto* party or where such a party causes delay or abuse of the Court process. See **Trusted Society of Human Rights Alliance vs. Mumo Matemu and 5 Others. Petition No. 12 of 2013.**
- 7) This Court cannot, on appeal make a final determination of facts in a matter which is still in the interlocutory stage at the lower court. As of now, this court is unaware of the status of the lower court case whose decision has precipitated this appeal.
- 8) Looking at the third issue and in view of the uncertainties expressed in paragraph 5 above, the Appellant has not pleaded or demonstrated any error by the lower court except the striking out of the motion dated 7-2-2025 which is normal business to any Court.
- 9) Coming now to the 4th issue, I find that the Appellants have not satisfied the conditions for the granting of the injunction sought. They have not established a prima facie case with a probability of success. They have not proved that they are up to date in payment of rent and who their landlord is. They have not explained what happened at the BPRT and why they did not appeal against the decision. They have not explained why they had to approach the magistrate’s Court in a dispute that was also heard by the BPRT. In short they have not

established a prima facie case with a probability of success. The Appellants have also not proved that they stand to suffer substantial loss that cannot be compensated with an award of damages especially with the deposition by the Respondents that as early as October 2023, they had been requested to seek alternative spaces to rent.

10) Finally, I find that while the notice of motion dated 9-5-2025 is brought under **Order 40 Civil Procedure Rules**, the Appellant's Counsel has in the submissions dated 26-5-2025 cited **Order 42 Civil Procedure Rules** which deals with stay of execution pending appeal. The submissions should be in tandem with the notice to motion.

For the above stated reasons, I find **no merit** in the motion dated 9-5-2025 and I **dismiss** it with costs.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 29th day of September, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Mwangi Njonjo
Appellant's Counsel – Mr. T.M. Njoroge
Respondent's Counsel – Mr Wachira