



Naku Modern Feeds Limited v Mzee t/a Shamzi Saloon Barber Shop & SPA (Environment and Land Appeal E064 of 2024) [2025] KEELC 6201 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E064 OF 2024
MAO ODENY, J
SEPTEMBER 24, 2025**

BETWEEN

NAKU MODERN FEEDS LIMITED APPELLANT

AND

**AGNES WANGECI MZEE T/A SHAMZI SALOON BARBER SHOP &
SPA RESPONDENT**

RULING

1. This ruling is in respect of the Appellant’s Notice of Motion application dated 21st May, 2025, which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to stay execution of the Ruling and Order in Nakuru BPRT No. E176 OF 2023 delivered on 19th July 2024 pending the hearing and determination of the Applicant’s appeal.
 - d. That the costs of this application be provided for.
2. The application is supported by the annexed affidavit of William Njoroge Karanja, the Appellant’s Director, sworn on 21st May, 2025, in which he deponed that the Respondent was the Appellant’s tenant and was unable to pay the reserved rent prompting, the Appellant to move the Business Premises Rent Tribunal in Nakuru BPRT Case No. E176 of 2023, to levy distress.
3. The Appellant’s Director further deponed that sometime on 4th December, 2023, the Respondent’s lawyers wrote to them indicating that the Respondent wanted to vacate the premises to avoid incurring further rent arrears. It was his deposition that the Respondent vacated the premises and was let to a new tenant under a written lease agreement dated 1st February, 2024. The Appellant’s Director further



- deponed that on 19th July, 2024, the BPRT delivered a ruling allowing the Respondent to remain in the demised premises after the Respondent had voluntarily given vacant possession.
4. The Respondent, Agnes Wangeci Mzee, filed a Replying Affidavit sworn on 26th May, 2025, and deponed that the Appellant has already been convicted for contempt of court for disobeying the ruling of the Business Premises Rent Tribunal [BPRT] rendered in July 2024. She further deponed that the Appellant has concealed that he previously applied for review of the ruling before the tribunal on similar grounds which application was dismissed.
 5. It was her deposition that the present application is a disguised attempt to obtain relief against a decision that is not under appeal and amounts to an abuse of the court process. She also stated that the application was filed in May 2025, nearly ten months after the ruling was delivered in July 2024, with no reasonable explanation for the delay.

APPELLANT’S SUBMISSIONS

6. Counsel for the Appellant filed submissions dated 30th May, 2025, and 5th June, 2025, and identified the issue for determination as whether the Appellant has met the threshold for the grant of stay of execution pending appeal. Counsel relied on Order 46 Rule 6 of the Civil Procedure Rules and the case of *Ena Investment Limited v Benard Ochau Mose & 2 others* [2022] eKLR. On substantial loss, counsel submitted that unless a stay is granted, the landlord is likely to be subjected to unbearable hardship of having to go through a contempt of court process with orders that were granted ultra vires.
7. On the requirement for security for the due performance of the decree, counsel submitted that that the Appellant is amenable to tendering security as per the Court’s directions, and in the case of *Butt v Rent Restriction Tribunal*. Counsel submitted that the Appellant has an arguable appeal.
8. Counsel further submitted that this court has the powers to grant a stay of the Ruling of 19th July, 2024, and relied on the cases of *Total Kenya Limited v Kenya Revenue Authority* [2013] eKLR, *Bake “N” Bite [NRB] Limited v Daniel Mutisya Mwalonzi*, Nairobi High Court Civil Appeal No 411 of 2014, *RWW v EKW* [2019] eKLR, *Pamela Awuor Ochieng and Another v Elisha Odari Ogony* [2021] eKLR, *Marine v Nampijja & Another Civil App No 93 of 1989 [Nairobi]*, *Nacheri v Mwamote [Tribunal Case E712 of 20230 [2024] KEBPRT 695 [KLR]*, *Pritam v Ratilal & Another* [1972] EA.

RESPONDENT’S SUBMISSIONS

9. Counsel for the Respondent filed submissions dated 12th June, 2025, and submitted that the appeal on record relates solely to the dismissal of the Applicant’s application for review and not the substantive ruling itself which renders the current application fatally defective. Counsel further submitted that a court can only exercise jurisdiction on matters properly before it, and relied on the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil [Kenya] Ltd* [1989] KLR1. Counsel also submitted that the Applicant has no legitimate grievance and there is nothing in a dismissal to be stayed.
10. Counsel submitted that the application was filed ten months after the BPRT’S ruling of July 2024 without any reasonable explanation for the delay, and cited the case of *Machira T/A Machira & Co Advocates v East African Standard [No 2] [2002] 2 KLR 63*. It was counsel’s further submission that the Appellant has already been convicted of contempt for disobeying the BPRT ruling and the orders have been substantially enforced, and relied on the case of *LAK v COO [Civil Appeal E056 of 2023] [2024] KEHC 7968*.
11. Counsel submitted that the appeal before court challenges only the dismissal of the review yet the instant application seeks stay of the original ruling making it untenable and relied on the cases of



HA v LB [2022] eKLR, Rex v Kensington Income Tax Commissioners ex parte Princess Edmond de Polignac [1917] 1 KB 486, 509 and Mrao v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125.

ANALYSIS AND DETERMINATION

12. The issue for determination is whether the Applicant has met the threshold for stay of execution of the Ruling and Order in Nakuru BPRT No. E176 OF 2023 delivered on 19th July 2024, pending the hearing and determination of the Applicant's appeal.
13. The legal framework for granting a stay of execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules which states:

“[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.”

14. On whether the application was filed without unreasonable delay, the Ruling was delivered on 19th July, 2024 while the Notice of Motion application is dated 21st May, 2025 and received by the court on the same day being 21st May, 2025. In the case of Jaber Mohsen Ali & another v Priscillah Boit & another [2014] the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”

15. The Memorandum of Appeal was filed on 29th November 2024, and the Application on 21st May 2025, as earlier stated. This shows that the Application was filed after a period of more than nine months.
16. In the case of Samwel Kimutai Korir [Suing as Personal and Legal Representative of Estate] of Chelangat Silevia v Nyanchwa Adventist Secondary School & Nyanchwa Adventist College [2017] eKLR, where there was a delay of 8 months in filing an application for stay of execution the court observed as follows:

“The applicant sat pretty after belatedly filing the Notice of Appeal until after the assessment of the respondent's bill of costs before asking for a stay of execution for 30 days, which stay was rightly construed by the respondent to have been intended to give them time to call for funds for settlement of the decretal only for the applicant to spring a surprise application for stay of execution pending an intended appeal. It is my observation that the conduct of the applicant during the period that preceded the filing of the instant application was that of an indolent litigant not worthy of the court's discretionary orders of stay of execution that it now seeks.”



17. Applicants who seek the intervention of the court to preserve the substratum of the case pending the hearing and determination of an appeal must act expeditiously to avoid being caught up with the principle of unreasonable/inordinate delay.

18. In the case of *Utalii Transport Company Ltd & 3 Others v NIC Bank Ltd & Another* 2014 eKLR the court held that:

“Whereas there is no precise measure of what amounts to inordinate delay and whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case the subject matter of the case, the nature of the case, the explanation given for the delay and so on and so forth.

Nevertheless inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable, conclusion that it is inordinate and therefore inexcusable. On applying the courts mind on the delay caution is advised for courts not to take the word “inordinate” in its dictionary measuring but in the sense of excessive as compared to normality”.

19. Similarly, in the case of *Teresiah Wairimu v Wanjiku Mwangi* [2018] eKLR the court held as follows:

“The Applicant must satisfy the Court that the application was made without unreasonable delay. The Court noted that the Memorandum of Appeal was filed on 27th August 2015, and an application for stay was filed on 3rd September 2015. However, the said application was withdrawn and the instant application was filed on 4th October 2016. By then, the Respondent had already applied for execution of the same. The execution sought to be stayed was initiated by the Respondent before the instant application was filed. Therefore, the Court finds that there was unreasonable delay in filing this application and the stay of execution has been overtaken by events. See the case of *Jane Jeptoo Sawe... v ...Estate of Sylvester Kimagut Sang Represented by Jennifer Chebet Sang*, Civil App No.49 of 2015, where the Court of Appeal held that:

“The order of stay of execution that the Applicant seeks has been overtaken by events and cannot in the present circumstances be granted as it would serve no useful purpose”.

Equally, the Court herein finds that the sought Order of stay of execution would not serve any purpose herein.”

20. It is admitted by both parties that the Respondent filed a suit in Nakuru High Court Misc. Application No. E0305 OF 2024 to punish the Applicant for contempt of court. The Respondent submitted that the matter was heard and the court found the Applicant to be in contempt.

21. The orders in the ruling sought to be stayed, have two limbs, namely that the tenant is allowed to remain in the demised premises pending the hearing and determination of the Reference and the tenant is to pay the uncontested rent arrears within 21 days upon receipt of the statement of accounts. It is also admitted that the Respondent/Tenant vacated the demised premises before the ruling was delivered.

22. There is an appeal contesting the legality or the jurisdictional mandate of the Tribunal issuing the ruling after the Tenant vacated the premises, which is pending before the court.

23. The court is cognizant of the fact that issues of delay in filing applications must be considered taking into account the circumstances of each case. The court also frowns upon indolence by parties in filing their applications. This is a matter where a Memorandum of Appeal was filed in time and the



Respondent engaged the Appellant in the High Court pursuing a contempt of court application. The issue whether the High Court was the right court for the Application is not part of what we are dealing with in this application, but it should be noted that all Appeals that arise from the Rent Tribunals lie in the Environment and Land Court.

24. The court therefore has no jurisdiction to stay the contempt proceedings that were undertaken before the High court as that would mean this court is sitting on Appeal of a matter in the High Court. The Applicant knows the procedures for setting aside such orders if is so aggrieved. The court finds that the delay was not inordinate as each case must be determined taking into account the unique circumstances.
25. The court therefore stays the order allowing the Respondent to remain on the demised premises, having voluntarily vacated pending the hearing and determination of the Appeal. Costs to abide by the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF SEPTEMBER 2025.

M. A. ODENY

JUDGE

