



REPUBLIC OF KENYA



KENYA LAW
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Karuri v Kenya Shelters Agencies Limited & another (Environment and Land Appeal E098 of 2025) [2025] KEELC 6940 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E098 OF 2025**

JG KEMEI, J

OCTOBER 9, 2025

BETWEEN

PETER PAUL KARURI APPLICANT

AND

KENYA SHELTERS AGENCIES LIMITED 1ST RESPONDENT

SANNEX ENTERPRISES AUCTIONEERS 2ND RESPONDENT

RULING

1. What is before the court is the applicant's application dated 5/6/25 seeking the following orders;
 - a. That this Honourable Court be pleased to issue an order enjoining the landlord, one Gitari Njoka as a Third Respondent/Defendant in the matter.
 - b. That this Honourable Court be pleased to order a stay of proceedings in the lower court, Milimani Chief Magistrate's Environment & Land Case Number E165 of 2025, pending the hearing and determination of this application and intended appeal.
 - c. That this Honourable Court be pleased to issue an order compelling the Intended Third Defendant, the Respondents and their servants and/or agents or any other person acting under their instructions to forthwith open the suit premises being Unit No. 6b Umoja and allow the Appellant/Applicant unlimited access and quiet enjoyment of the said premises pending the hearing and determination of this Application.
 - d. That this Honourable Court be pleased to issue an order compelling the Intended Third Defendant, the Respondents and their servants and/or agents or any other person acting under their instructions to forthwith open the suit premises being Unit No. 6b Umoja and allow the Appellant/Applicant unlimited access and quiet enjoyment of the said premises pending the hearing and determination of the intended Appeal.



- e. That this Honourable Court be pleased to issue a temporary injunction against the Intended 3rd Respondent and the Respondents, their agents, servants and/or assignees or any other person working under their directions and command from closing the Appellant/Applicant's suit premise and/or blocking his access to Unit No. 6b Umoja until hearing and determination of this Application and the intended Appeal.
 - f. That the Officer Commanding Buruburu Police Station assist in the enforcement of the above orders.
 - g. That the costs of this Application be in the cause.
2. The application is based on the grounds annexed thereto and the supporting affidavit sworn by the applicant on even date.
 3. The deponent confirmed that he has been a tenant in Unit 6B Umoja since July 2022, under a verbal agreement with the Landlord, with a rent of Kshs 17,000/- payable directly into the Landlord's account at Family Bank. He has consistently paid rent on time, including advance payments.
 4. However, on 4/5/25, the respondents erroneously proclaimed the sale of his personal belongings in the house by public auction, on account of unpaid rents to the tune of Kshs 110,000/-.
 5. That on 24/5/25, his access to his house was blocked by welding the main entrance, forcing him to file a suit in MCELC No E165 of 2025 on 29/5/25, seeking orders to compel the landlord to allow him access to the house. Contemporaneously, he filed a notice of motion seeking the following orders;
 - a. That the Intended Third Defendant be enjoined in the suit as a party;
 - b. That the Intended Third Defendant be compelled to open Unit No. 6B Umoja and allow the Applicant unlimited access and quiet enjoyment;
 - c. That a temporary injunction be issued restraining the Respondents from closing, locking, or blocking access to the said Unit pending determination of the Application and main suit;
 - d. That the Officer Commanding Buruburu Police Station assist in enforcing the said orders.
 - e. Costs of the application.
 6. The trial court issued directions on the above application in the following terms;

This matter coming up on 05/06/2025, it is hereby ordered: That this matter has a ruling date of 10/07/2025, given under my hand and seal of the Honourable court this 05/06/2025.
 7. Aggrieved by the said directions, the applicant filed a memorandum of appeal dated 5/6/25 alongside the instant application.
 8. That due to the illegal and unlawful closure of the house, he has nowhere to reside, as his personal items, including medication, are held therein. He urged the court to grant the orders.
 9. The respondents oppose the application. Joel Migwi, via his replying affidavit sworn on 25/6/25, stated that he is a director of the 1st respondent, an estate agent authorised to collect rent on behalf of the landlord.
 10. He narrated the litigation history between the parties in the trial court, most of which are pending hearing and determination.



11. The deponent presented several pictures of the empty house to demonstrate that the applicant vacated the premises voluntarily, effectively terminating the landlord-tenant relationship. He also stated that upon his vacation, the landlord secured the house to protect it from trespass and burglary. Additionally, he mentioned that the house has been let to another tenant.
12. He admitted that the distress for rent was levied lawfully in accordance with the proclamation dated 4/5/25 due to rent defaults. That the applicant has not provided a comprehensive rent payment record showing full payment of the rent, which has accumulated to Kshs 110,000/-.
13. Njoka Gitari, the landlord, swore a replying affidavit on 20/6/25 in opposition to the application, reiterating the contents similar to those of Mr Migwi.
14. Parties filed written submissions which I have read and considered.
15. The issues that commend themselves for determination are
 - a. Whether it is necessary to stay the proceedings in the lower court pending the hearing and determination of the application and intended appeal.
 - b. Whether the Applicant has satisfied the conditions for the grant of an interlocutory injunction.
 - c. Whether the Landlord, one Gitari Njoka, should be enjoined in the suit as a third defendant.
 - d. Whether the landlord should be compelled to grant entry to the leased premises.
16. It is undisputed that the appellant and the Landlord had a tenant-landlord relationship under the management of the 1st Respondent. The applicant claims he was unlawfully evicted, despite paying his rent punctually including making advance payments. Conversely, the 1st Respondent maintains that the applicant was a habitual rent defaulter and that he voluntarily abandoned the property. Consequently, the property had to be secured to prevent trespass by unknown persons. That the applicant was never formally evicted, and the house is currently leased to a third party, making it unavailable to the applicant.
17. The law on stay of proceedings pending appeal is provided for in Section 6 of the *Civil Procedure Act* to the effect that where an issue is directly and substantially in issue in the proceedings between the same parties, another Court ought to stay its proceedings in respect of such suit. Stay of proceedings is further alluded to under Section 6 of the *Civil Procedure Act* (CPA) and Order 42 Rule 6(1) of the Civil Procedure Rules (CPR).
18. In the case of William Odhiambo Ramogi & 2 Others –vs- The Honourable Attorney General & 3 Others [2019] eKLR, a 5-judge Bench of the High Court, laid out the principles our Courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory Application to a higher Court;
 - a. First, there must be an appeal pending before the higher Court;
 - b.
19. The law on stay of proceedings is provided for under Section 6 of the *Civil Procedure Act* to the effect that where an issue is directly and substantially in issue in proceedings between the same parties, another Court ought to stay its proceedings in respect of such suit. Stay of proceedings is further alluded to under Order 42 Rule 6(1) of the Civil Procedure Rules.



20. In the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000, the Court held as follows;

“ As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.

21. In this case, it is generally accepted that the suit in the trial court is yet to be heard. The applicant's sole grievance is that the court issued directions indicating that the matter has a date for Ruling. Therefore, I do not find any proceedings that the court is authorised to stay. The parties should allow the trial court to hear the application, and only after the court has made its decision will some proceedings be properly subject to a stay. Evidently, court directions are essential for case management, but in my view, they do not constitute an appealable decision.

22. In the circumstances of this case, I find that the application is premature and should be rejected.

23. Having reached the above conclusion, I see no need to address the other issues, as they all depend on whether or not orders of stay of proceedings are allowed.

24. Allowing the prayers sought will, in fact, hinder the hearing of the suit in the trial court, thus impeding the right to be heard, and additionally, it will not be a prudent use of judicial time.

25. In the end, the application is premature. It is struck out with costs to the respondents

26. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Mr Chege HB for Mr Mare for the Appellant
2. Mr Mwale HB for Mr Kiberenge for the 1st Respondent
3. Mr Mwale for the 2nd Respondent
4. CA- Ms Yvette Njoroge

