Mandala v Omonya (Environment and Land Appeal E011 of 2025) [2025] KEELC 7029 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7029 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ENVIRONMENT AND LAND APPEAL E011 OF 2025

EC CHERONO, J

OCTOBER 9, 2025

BETWEEN

BENARD MANDALA .... APPELLANT

AND

REBECCA OMONYA .... RESPONDENT

(Being an appeal from the ruling and/or orders of Hon. PATRICK KITUR (Member) at BUSINESS PREMISES RENT TRIBUNAL orders given on the 27th November, 2024 and 28th April, 2025)

RULING

1. The Appellant/Applicant vide an Amended Notice of Motion brought under certificate of urgency dated 12th May 2025 seeks the following orders;
    1. (Spent)
    2. That there be a temporary stay of execution of the orders of the Tribunal issued in Business Premises Case No. E170 Of 2024 on the 28th April 2025 on 20th September 2024 and extended on the 27th November 2024 pending hearing and determination of this application inter-parties or Appeal.
    3. That the orders of the Tribunal in Business Premises Case No. E170 OF 2024 on the 20th September 2024 and extended on the 27th November 2024 be set aside pending hearing and determination of the Appeal herein
    4. That the costs of this application be provided for.

2. The application is based on 7 grounds apparent on the face of the application and a supporting affidavit of the Applicant sworn on even date. The supporting affidavit is a replica of the grounds on the face of the said application.

3. In her supporting affidavit, the Appellant/Applicant deposed that on 18th September 2024 the Respondent filed an application in the Tribunal where She sought a mandatory order to re-enter the premises and to be enforced by the police, which application orders were given ex-parte without him being heard and despite formally applying to be heard vide an application dated 14th November, 2024. That the Tribunal has now granted substantive orders in favour of the Respondent without him being heard or his reservation raised I his application heard, especially the issue of service and non-listing of the matter on the court's cause list when it came up for directions inter-partes.

4. The Applicant further deposed that the issue of jurisdiction was not entertained by the Tribunal despite his evidence demonstrating a new tenancy in force vide a duly executed agreement, no agreement or rent payment by the Respondent has ever been tendered before the Tribunal. Finally, the Applicant stated that the Respondent will not suffer any prejudice or injustice if the reinstating order is set aside, their being a different tenant who will suffer greater prejudice and or sue for damages.

5. When the application was placed before for directions sitting as the duty judge, I found the said application not urgent to be heard on priority basis during the court's August Vacation and gave directions that the application be canvassed by affidavit evidence to be filed within given timelines and written submissions. When the matter came up for mention next to confirm compliance, the Respondent had not filed her response. After satisfying myself that the Respondent was duly served, the court set down the matter for ruling.

6. I have considered the Applicant's Notice of Motion Application Amended on 12th May 2025, the supporting affidavit and the annexures thereto as well as his written submissions dated 26th May 2025. The application under review is brought under Order 42 Rule 6 of the Civil Procedure Rules, the Business Rent Tribunal Act and all enabling provisions of the law. Order 42 Rule 6(2) CPR provides as follows;

   '(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...."

7. It is clear from the provisions of the law above that no stay of execution order can issue unless an applicant has satisfied the following three conditions;

   1. The applicant would suffer substantial loss;

   2. The application has been brought without unreasonable delay; and

   3. Such security as the court orders for the due performance as may ultimately be binding on him has been given by the applicant.

8. On the first condition, the applicant at paragraph 4 of the grounds on the face of application has merely averred that in the event the orders sought are not granted, the appeal to this court shall be rendered nugatory, the appellant and the current tenant will suffer loss and damages. The applicant did not

extrapolate/substantiate how he would suffer substantial loss. He did not place before the court such material and information that would lead this court to conclude that the applicant will indeed suffer substantial loss unless the order sought is granted. In the case of; Machira t/a Machira & Co. Advocates v East African Standard (NO. 2) (2002) KLR 63, the court held;

> '' in this kind of application for stay, it is not enough for the applicant to merely state that substantial loss will result. He must prove specific details and particulars…where no pecuniary or tangible loss is shown to the satisfaction of the court, the court will not grant a stay.''

9. Further in the case of; Charles Wahome Gethi v Angela Wairimu Gethi (2008) eKLR, the court held;

> '' the applicant does not claim that the respondent intends to sell the portion of land in dispute and that it will not be in existence by the time the appeal is determined…. In the circumstances of this case, the applicant would suffer substantial loss rendering the appeal, if successful nugatory only if the suit land is disposed of before the appeal is determined. The applicant does not claim that the suit land would be disposed of. The applicant has not, in our view established that unless stay is granted, he will suffer substantial loss and that the appeal, if successful would be rendered nugatory.''

10. Again in James Wangalwa & Another v Agnes Naliaka Cheseto (2012) KLR, the court held;

> '' No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is because execution is a lawful process.''

11. On the question of substantial loss, the applicant has not demonstrated what loss he will suffer if the order for stay is not granted. It is therefore difficult to envision what loss he would suffer if the stay order sought is not granted. His fears that he will suffer loss with his new tenant is totally unfounded.

12. On the question of delay, I am of the view that the application was filed without unreasonable delay.

13. With regard to security for costs, the Applicant has made no attempt to furnish security for costs as required under Order 42 Rule 6 CPR.

14. Additionally, the Applicant has not demonstrated how this appeal would be rendered nugatory if a stay order is not granted.

15. The upshot of my finding is that the Applicant has failed to meet the threshold for the grant of stay pending appeal. In the result, the Notice of Motion Application Amended on 12th May 2025 is without merit and the same is hereby dismissed.

16. I make no order as to Costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 09TH DAY OF OCTOBER, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Mandala for the Appellant.

2. Respondent/Advocate-absent

3. Bett C/A.