



REPUBLIC OF KENYA



Nyaoga t/a Monte Carlo Lounge v Nyaata (Environment and Land Appeal E011 of 2025) [2025] KEELC 4409 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4409 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E011 OF 2025**

M SILA, J

JUNE 12, 2025

BETWEEN

JAMES OMARIBA NYAOGA T/A MONTE CARLO LOUNGE APPELLANT

AND

JOHN PETER NYAATA RESPONDENT

(Application for stay pending appeal; stay granted subject to deposit of decretal sum as security)

RULING

1. The application before me is that dated 25 March 2025 filed by the appellant. It seeks orders of stay of execution of the ruling of the Business Premises Rent Tribunal, delivered on 26 February 2025, pending hearing and determination of this appeal. The application is opposed.
2. The applicant and respondent had a landlord/tenancy relationship, with the applicant as tenant and respondent as landlord, in the premises West Kitutu/Bogeka/2211. A dispute arose regarding payment of rent and the respondent filed suit before the Business Premises Rent Tribunal (BPRT) claiming unpaid rent arrears. The applicant on the other hand contended that he had made massive renovations on the demised premises and that they had an understanding that the value of the renovations will offset some rent payments. In the impugned ruling, the tribunal did not find any evidence of an agreement to offset rent against the renovations. It ordered the applicant to clear the rent arrears of Kshs. 1,390,000/= and costs of Kshs. 40,000/= no later than 4 March 2025, and in default the respondent was given liberty to distress for rent. The applicant was also given up to 31 March 2025 to give vacant possession. Aggrieved, the applicant filed the present appeal and followed it up with this application seeking stay pending appeal.
3. In the course of hearing the application, I was informed that the applicant has already vacated the premises. It would mean therefore that what I have before me is restricted to payment of the money ordered. At the hearing of the application, Mr. Wesonga, learned counsel for the respondent urged that



now that the applicant has moved out of the premises, he ought to deposit the entire decretal sum as security. Ms. Kiunga, learned counsel for the applicant, urged that her client had a case for offsetting the amount against renovations.

4. I have taken note of the foregoing. This is an application for stay pending appeal and I stand guided by the principles laid down in Order 42 Rule 6 (2) which is drawn 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.
5. It follows from the above that first, the applicant needs to satisfy the court that he/she stands to suffer substantial loss if the stay order is not granted, secondly the applicant must have come to court without unreasonable delay, and finally the applicant needs to offer security for the due performance of the decree.
6. The application has certainly not been filed after unreasonable delay. I am not too sure about the question of substantial loss since all that is at stake at this point is the money payable and I would think that since the respondent is landlord, he would have capacity to refund the Kshs. 1,390,000/= plus costs. But let me give the applicant benefit of doubt on substantial loss and assume that he will suffer substantial loss if the decree is executed. The next issue will be security. The applicant has already moved out of the premises and carted away his goods. There cannot now be security in the goods and fixtures that he had in the premises. The only tangible security that I can think of is to order the applicant to deposit the decretal sum and costs either in court or in a joint interest earning account.
7. I am thus prepared to grant stay of execution pending appeal subject to the amount of Kshs. 1,430,000/= being deposited by the applicant, either in court or in a joint interest earning account, within the next 30 days. In default, the applicant will not benefit from any order of stay pending appeal and the respondent will be at liberty to proceed with execution.
8. If the applicant abides by the above order then costs of this application will be costs in the appeal but if he fails then he will bear the costs of this application.
9. Orders accordingly.

DATED AND DELIVERED THIS 12 DAY OF JUNE 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Ms. Kiunga h/b for Mr. Eric Theuri for the appellant/applicant

Mr. Wesonga for the respondent

Court Assistant – Michael Oyuko

