



**Kandie t/a Chesirwo Agencies v Kiplelei Limited (Environment and Land Appeal E022 of 2025) [2025] KEELC 7458 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7458 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E022 OF 2025**

**CK YANO, J**

**OCTOBER 30, 2025**

**BETWEEN**

**SILAS KANDIE T/A CHESIRWO AGENCIES ..... APPLICANT**

**AND**

**KIPLELEI LIMITED ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 18<sup>th</sup> July, 2025, the Appellant/ Applicant sought the following orders: -
  1. Spent.
  2. Spent.
  3. That there be stay of proceedings, execution and/or further action in Eldoret BPRT Case No. E013 of 2025 pending the hearing and determination of this appeal.
  4. Costs this Application be provided for.
2. The application is premised on 5 grounds on its face and supported by the applicant's affidavit sworn on even date. The applicant gave a brief background of the application dated 31.01.2025 before the Eldoret BPRT Case No. E013 of 2025. That in response to the said application, he filed a notice of preliminary objection dated 17.02.2025, challenging the landlord's entire suit on the ground that the suit was improperly before the tribunal, whose jurisdiction has been statutorily divested.
3. He went further to state that the notice of preliminary objection was heard by way of written submissions and a ruling thereto delivered on 23.04.2025. The effect of the said ruling was to dismiss the preliminary objection and to pave way for the hearing of the respondent's application dated 31.01.2025 seeking his eviction from the business premises.



4. It is his claim that being aggrieved by the ruling of the tribunal issued on 23.04.2025, he instructed his advocate on record to lodge an appeal to challenge the said decision, which appeal he maintains raises serious and weighty legal issues for determination with overwhelming chances of success.
5. He contends that if the respondent is allowed to proceed with the Eldoret BPRT Case No. E013 of 2025 before the tribunal, there is a likelihood that adverse orders of eviction will be issued against him, despite the fact that the jurisdiction of the tribunal is one of the issues for determination in the pending appeal.
6. He further averred that he is ready and willing to abide by any condition that this honourable court may impose for the grant of the orders sought.
7. He maintained that the application had been filed promptly and in the interest of justice and further that no prejudice will be suffered if the orders sought are granted. He thus urged the court to allow the application as sought.
8. The application was opposed. The Respondent filed a Replying Affidavit dated 30.07.2025, sworn by one Shivji Virji, the manager of the Respondent premises, in response to the averments raised in the application. He dismissed the application as being bad in law, incompetent, mischievous, frivolous, an afterthought and an abuse of the court process and hence the same ought to be dismissed in the first instance.
9. It was his claim that the applicant is also pursuing a similar application before the tribunal and is therefore guilty of forum shopping and abusing the court process. He annexed a copy of the said application filed in the BPRT Case No. E013 of 2025.
10. It was further his claim that the applicant had not met the threshold for the grant of the orders sought in the instant application as provided under Order 42 Rule 6 of the Civil Procedure Rules. That the applicant had failed to demonstrate the substantial loss that he is likely to suffer or show that he is in a position to provide security for the performance of any decree.
11. He went on to explain that the applicant's rent account is currently in arrears of Kshs. 424,000/= and therefore the Landlord/Respondent stands to suffer irreparable loss and damage should the application be allowed, since the respondent will be denied the opportunity to earn income to offset development loans and settle its recurrent utilities including water, electricity, security, cleaning among other things.
12. It was his contention that the applicant continues to occupy the respondent's premises and maintained that the BPRT retains a residual jurisdiction to grant orders for the recovery of possession and for the payment of arrears of rent and mesne profits pursuant to the provisions of section 12 (1) (e) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301.
13. He went further to assert that it was paradoxical for the applicant to purport that the tribunal lacked the requisite jurisdiction to entertain the suit while on the other hand file an application seeking stay orders in the same forum whose jurisdiction he is challenging.
14. On the issue of security for costs, he averred that the respondent is an entity of means with a portfolio of over 100 rent paying tenants and is therefore capable of adequately compensating the applicant in the unlikely event that his appeal is successful. He thus maintained that the appellant/applicant will not suffer any substantial loss and damage should the orders sought be denied.
15. In the alternative and without prejudice to the foregoing, he deponed that in the unlikely event that this court is inclined to grant the orders sought, then the court should direct that the entire outstanding



rent in the sum of Kshs. 424,000/= be paid by the applicant and any further accruing amounts be paid to the landlord as and when it becomes due in order to assist the landlord meet its recurrent utility obligations.

16. In conclusion, he urged the court to dismiss the application with costs to the respondent.
17. The application was canvassed by way of written submissions. The applicant filed his submissions dated 29.09.2025 while the respondent filed their submissions dated 13.10.2025 together with authorities, which I have read and considered.

#### **Analysis and Determination:**

18. Having carefully considered the Application and the grounds therein, the Supporting Affidavit and the annexures and the Replying Affidavit thereto, as well as the rival submissions in totality, it is my considered view that the issues arising for determination are;
  - i. Whether an Order for Stay of Execution can issue against ruling issued on 23.04.2025 in Eldoret BPRT Case No. E013 of 2025
  - ii. Whether an Order for Stay of Proceedings and any other further action can issue against the proceedings in Eldoret BPRT Case No. E013 of 2025.

#### **Whether an Order for Stay of Execution can issue against ruling issued on 23.04.2025 in Eldoret BPRT Case No. E013 of 2025;**

19. It is now well settled that no appeal shall operate as an automatic stay of execution. The powers of the court to grant an order for stay of execution is provided under Order 42 Rule 6(1) of the Civil Procedure Rules, 2010, while Rule 6(2) provides the conditions to be met in an application for stay of execution.
20. Order 42 Rule 6 of the Civil Procedure Rules provides as follows:-
  6.
    - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
    - (2) No order for stay of execution shall be made under sub- rule (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.  
(emphasis mine)



21. Thus, from the above provision, the three necessary conditions that must be proved to warrant the grant of an order for stay of execution are as follows:-
- i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered;
  - ii. The application is brought without undue delay, and
  - iii. 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.
22. However, before delving into the merits of whether the conditions for the grant of an order for stay of execution has been met, it is important to first determine whether the order of the tribunal issued on 23.04.2025 is capable of being stayed.
23. It is common ground that the ruling issued by the tribunal dismissed the applicant's notice of preliminary objection, which sought to challenge the jurisdiction of the tribunal to entertain the respondent's suit as filed. Consequently, the said order for dismissal is a negative order incapable of execution.
24. The Court of Appeal in the case of *Kenya Commercial Bank Limited v Tamarind Meadows Limited & 7 Others* [2016] eKLR expounded on stay of execution of a negative order stating: -
- “In *Kanwal Sarjit Singh Dhiman v Keshavji Juvraj Shah* [2008] eKLR the Court of Appeal while dealing with a similar application for stay of a negative order, held as follows: - “The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December 2006. The order of 18th December 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only. The same reasoning was applied in the case of *Raymond M. Omboga v Austine Pyan Maranga* (supra) that a negative order is one that is incapable of execution, and thus, incapable of being stayed. This is what the Court had to say on the matter: -
- “The order dismissing the application is in the nature of a negative order and is incapable of stay of execution, save perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is capable of execution, there can be no stay of execution of such an order. The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise....”
25. Associating myself with the abovementioned case law, it is not in dispute that the order of the trial court issued on 23.04.2025 being a dismissal order, is a negative order incapable of execution. In essence, no execution is threatened that needs to be stayed and the dismissal order is thus not an executable order. As a result, therefore, an order for stay of execution in the nature sought herein cannot issue as the decree cannot be executed.



**Whether an Order for Stay of Proceedings and any other further action can issue against the proceedings in Eldoret BPRT Case No. E013 of 2025;**

26. The applicant has also sought the grant of an order of stay of proceedings in Eldoret BPRT No. E013 of 2025. He contends that the effect of the ruling issued on 23.04.2025 was to pave way for the hearing and determination of the application dated 31.01.2025 filed by the respondent before the tribunal.
27. It is therefore his claim that unless the proceedings before the BPRT are stayed, the same are likely to proceed and adverse orders may be issued against him including his eviction from the business premises.
28. Stay of proceedings is an equitable remedy and an applicant seeking the same must come to court with clean hands. An order for stay of proceedings is also discretionary in nature and the court in exercising such discretion must exercise the same judiciously, given its effect of forestalling court proceedings before another court or tribunal and further impeding the expeditious disposal of matters without delay and/or access to justice.
29. This court is duty bound to take into account the rights of both parties, weighing the pros and cons of granting the order for stay of proceedings or not granting, while noting that the right to be heard on appeal should not be seen to defeat the ends of justice.
30. Ringera J in the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 while dealing with the issue of stay of proceedings persuasively stated 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”
31. The applicant has lodged an appeal against the ruling of the BPRT issued on the 23.04.2025 vide a Memorandum of Appeal dated 22.05.2025, which raises 9 grounds of appeal and essentially seeks to challenge the jurisdiction of the BPRT to hear and determine the respondent’s suit.
32. The applicant in support of his claim, has demonstrated that his appeal is arguable and raises substantial questions touching on the jurisdiction of the BPRT, to be determined by this court as the appellate court. It is a well settled principle of law that jurisdiction goes to the root of a case, and is therefore in my opinion, a substantial and serious issue and hence an arguable appeal. An arguable appeal is any appeal that raises at least one bonafide issue and which deserves to be considered by the appellate court.
33. In considering whether or not to grant an order for stay of proceedings pending the hearing and determination of an appeal, it is also important to consider whether the said appeal will be rendered nugatory.
34. The onus is on the applicant to sufficiently demonstrate how the appeal will be rendered nugatory unless the orders for stay of proceedings sought are granted. It is the applicant’s claim that if the



proceedings in the tribunal are not stayed, the same will proceed and adverse orders of eviction may be issued against him as sought in the respondent's application dated 31.01.2025.

35. I have carefully considered the rival claims by the parties as well as the respondent's application dated 31.01.2025 in the tribunal. It is my considered opinion that if allowed to proceed and the appeal is successful, its effect would be to render the proceedings void for want of jurisdiction. There is therefore need to have the said proceedings stayed pending the hearing and determination of the appeal herein.
36. The final element to consider is whether the application was filed without unreasonable delay. The applicant has maintained that the application was filed promptly.
37. The impugned ruling was issued on the 23.04.2025 while the instant application was filed on 18.07.2025. I have carefully looked at the applicant's supporting affidavit and I find no explanation for the almost 3 months' delay in filing the instant application. It has been held that a delay of even 1 day may be considered inordinate delay where there is no sufficient and satisfactory explanation for the said delay.
38. Be that as it may, taking the totality of the foregoing into consideration and in the interest of substantive justice, it is the finding of this court that there was no inordinate delay occasioned in the filing of this application.
39. In *Niazsons (K) Ltd. vs. China Road & Bridge Corporation (Kenya)* [2001] e KLR, Onyango-Otieno, J (as he then was) held that: -

“Where the appeal may have very serious effects on the entire case so that if stay of proceedings is not granted the result of the appeal may well render the orders made nugatory and render the exercise futile, stay should be granted.”
40. In conclusion and guided by the above decision, it is my finding that an order for stay of proceedings should be granted. The applicant has sufficiently proved his case to the required standard to warrant the grant of the order for stay of proceedings sought.
41. However, this court has taken note of the sentiments by the Respondent on the need for the Applicant to be upto date on the rental payment so as to enable it pay its development loans and recurrent bills. It is therefore my considered opinion that there is need for the applicant to pay his monthly rent as and when they fall due with effect from November, 2025. The alleged disputed arrears to await the outcome of the appeal.

### **Conclusion:**

42. In view of the foregoing, I accordingly find that the Application dated 18<sup>th</sup> July, 2025 is partially merited and is hereby partially allowed on the following terms: -
  - a. An Order for Stay of Proceedings and/or further action be and is hereby issued in ELDORET BPRT Case No. E013 of 2025 pending the hearing and determination of this appeal, subject to payment of rent as stated in paragraph 41 above.
  - b. The appellant is hereby directed to file the Record of Appeal within 30 days from the date of this ruling.
  - c. Each party to bear their own costs.
43. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. C. K. YANO**

**ELC, JUDGE**

Ruling delivered virtually in the presence of: -

Mr. Lubanga holding brief for Mr. Kagunza for the Appellant/ Applicant

Mr. Terer holding brief for Mr. Langat for the Respondent

Court Assistant – Laban

