



**Nyamongo t/a Balozi Hotel & another v Kisii Chemist (K) Limited
& 2 others (Environment and Land Case E001 of 2023 & 6 of 2024
(Consolidated)) [2025] KEELC 7652 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7652 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE E001 OF 2023 & 6 OF 2024 (CONSOLIDATED)
M SILA, J
NOVEMBER 4, 2025
(FORMERLY KISII CMCC NO. E038 OF 2023)**

BETWEEN

JACKSON MASEGA NYAMONGO T/A BALOZI HOTEL PLAINTIFF

AND

KISII CHEMIST (K) LIMITED 1ST DEFENDANT

JOSEPHAT O NYACHOTI T/A MINMAX AUCTIONEER 2ND DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE 6 OF 2024

BETWEEN

KISII CHEMIST (K) LIMITED PLAINTIFF

AND

JACKSON MASEGA NYAMONGO T/A BALOZI HOTEL DEFENDANT

RULING

1. The application before me is that dated 25 July 2025 filed by Jackson Masega Nyamongo T/A Balozi Hotel. The substantive prayer sought in the application is to set aside the judgment delivered on 16 July 2025 and all consequential orders. He wants the suit re-opened and heard on its merits.
2. To put matters into context, the applicant is plaintiff in the suit Kisii ELCC No. E001 of 2023 wherein he sued the respondent and Josphat Nyachoti t/a Minmax Auctioneers (the auctioneer). In



that suit, commenced through plaint on 2 February 2023, he complained of illegal distress of rent. Apparently, his goods were distressed for non-payment of rent by the auctioneer on instructions from the respondent (Kisii Chemist Limited). In that plaint he claimed that his hotel items were carted away to an unknown destination. He wanted a declaration that the proclamation of his goods was illegal, a mandatory injunction to have the goods allegedly carted away to be produced, and general and exemplary damages for unlawful eviction and illegal distress.

3. On the other hand, through a plaint filed on 4 May 2023, in the Chief Magistrate's court, which suit was eventually transferred to this court and consolidated with the applicant's suit, the respondent sued the applicant for unpaid rent amounting to Kshs. 7,188,934/= and mesne profits. That suit is the suit Kisii ELCC No. 6 of 2024.
4. On 5 February 2025, I gave the hearing date of 18 June 2025. On that date, Mr. Isayi, learned counsel, held brief for Mr. Nyangacha for the applicant and sought an adjournment on the grounds that both the applicant and Mr. Nyangacha were indisposed. Mr. Mainga, learned counsel for the respondent, opposed the application. He pointed out the various adjournments that the applicant had asked for in order to comply with pretrial preliminaries and further submitted that even the costs of Kshs. 3,000/= that the applicant was ordered to pay on 13 November 2024 remained unpaid. He submitted that after that order the applicant disappeared. I assessed the submissions and I was not persuaded to adjourn. It was indeed true that on 13 November 2024, after several adjournments to comply with pretrial directions issued under Order 11 of the Civil Procedure Rules, 2010, had been made, I gave more time to the applicant but ordered the applicant to pay Court Adjournment Fees of Kshs. 2,000/= and Kshs. 3,000/= to the respondent within 7 days. I then directed the case to be mentioned on 5 February 2025 when neither applicant nor counsel showed up in court. That is when I gave the hearing date of 18 June 2025. Apparently, neither the court adjournment fees had been paid nor the costs to the applicant. I further found no evidence of illness of either counsel or applicant. I was not impressed by the application for adjournment and allocated time for hearing.
5. At the hearing, there was now no counsel for the applicant and the applicant was also absent. The matter proceeded for hearing with the respondent's witness testifying. I then reserved judgment for 16 July 2016 and directed that the applicant's counsel be served. Neither applicant nor counsel appeared in court on 16 July 2025 on the date of delivery of the judgment. I duly delivered the judgment. I entered judgment in favour of the respondent in the sum of Kshs. 7, 144,934/= being rent arrears.
6. After judgment, I see that the applicant changed counsel and appointed the law firm of M/s Akanga Matende & Company Advocates. This application was then filed.
7. The application is supported by the affidavit of the applicant. He deposes that he is aware that the suit came up for hearing on 18 June 2025. He deposes that he had reached out to his advocate to seek adjournment on the ground that he was unwell. He has annexed what he refers to as a medical report. He deposes that unknown to him the application for adjournment was rejected and that his advocate did not appear at the hearing. He deposes that his advocate did not inform him that the court had declined the adjournment to enable him attend and address court on his illness. He states that he reached out to his advocate who told him that the matter was scheduled for hearing on 16 July 2025. He swears that it is on 16 July 2025 that he came to learn that his advocate had lied to him because he learnt that the case came up for judgment. He deposes that he reached out to his nephew by name of George Magange who confirmed to him from the Court Tracking System that his suit was terminated on 18 June 2025 and judgment entered for the respondent in respect of her case Kisii ELC No. 6 of 2024. He deposes that he reached out to his advocate who has remained unresponsive. He thinks he has a good case. He deposes that he failed to attend court as he was unwell and that he should be excused for the mistakes of his advocates.



8. When the application came before me ex parte in the first instance, on 25 July 2025, I granted interim orders of stay of execution but subject to the applicant depositing the sum of Kshs. 2 million within 14 days.
9. When the application came up for inter partes hearing on 8 October 2025, Mr. Mainga, learned counsel for the applicant, submitted that the applicant had failed to deposit the Kshs. 2 million and therefore he did not see the need to reply to the application. There was a later request for more time to reply which I rejected since time to reply was there from the month of July. Thus, there is nothing filed by the respondent to oppose the application.
10. I have considered it.
11. I must say that I have not been too impressed by the applicant's conduct of the proceedings herein. On 16 May 2024, the applicant sought 14 days to file documents which I gave. On 17 July 2024, Mr. Nyangacha, who was then acting for the applicant, came to court and asked for 14 days to apply to cease acting, which time I gave but no application was ever filed. He then came to court on 1 October 2024 and said that he now has instructions and asked for a date for pretrial and I gave 13 November 2025. On that date he asked for time to comply. I thought I had given sufficient time and that is why I ordered court adjournment fees be paid by the applicant and the costs of Kshs. 3,000/= to the respondent in 7 days. I have not heard, within the hearing of this application, of any mention that the applicant has now paid the costs or court adjournment fees. I have checked the record and the court adjournment fees are unpaid. I am not even certain that the applicant has a right of audience for not paying court fees.
12. Be that as it may, the applicant now says that he was unwell. For the record, there is no treatment chit annexed. What is annexed is a letter dated 17 June 2025 saying that he has some condition and he is granted 3 days off duty with effect from 17 June 2025 to 20 June 2025. The applicant says that he reached out to his advocate who told him that the case is for hearing on 16 July 2025. He has not said how he reached out to his advocate and how this information that the matter was for hearing on 16 July 2025 was delivered to him. I have no evidence of this communication between himself and his advocate. I would assume if he was indeed told that the case has a hearing date of 16 July 2025, the applicant would then have made appearance in court on that day ready to proceed with his case. However, the record shows that on 16 July 2025 the applicant did not appear in court and neither his advocate. His non-appearance in court on 16 July 2025 makes me doubt his depositions in support of his application. I am actually not persuaded by the same. Moreover, I see no deposition in his affidavit demonstrating what defence he has against the claim for rent arrears. In essence he has failed to demonstrate that he has a good defence which deserves ventilation.
13. My impression is of a litigant who is trying his best to drag the case through court for as long as possible. This is not a practice that parties should be encouraged to employ.
14. Out of this court's own discretion, and not because of the depositions that he has made, which for the record I do not believe for reasons given, I am prepared to give the applicant a hearing and prepared to set aside the judgment. This however will have to be on the condition that the applicant deposits the sum of Kshs. 2 million (Kshs. 2,000,000/=) in court within the next 30 days. I have come to this decision for reason that what the respondent now holds is a money decree for Kshs. 7,144,934/= . I am persuaded that some sort of security is warranted given the history of this case and the fact that no deposit for security was made after the court issued its directions at the ex parte stage of this application. If the applicant does not deposit the monies, then his application will be considered dismissed and the proceedings of 18 June 2025 together with the judgment of 16 July 2025 will remain undisturbed. If he makes the deposit then the proceedings of 18 June 2025 and the judgment of 16 July 2025 will be set aside and the suit re-opened for hearing.



15. I make no orders as to costs given that the respondent did not reply to the application.

16. Orders accordingly.

DATED AND DELIVERED THIS 4TH DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Marita for the applicant

Ms. Nyanchama h/b for Mr. Mainga for the respondent

Court Assistant – Michael Oyuko

