

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND AT NAIROBI
ELCA NO E007 OF 2025

AMINA MOHAMMED OMAR - **TENANT/**
APPELLANT

VS

MOHAMMED HASHI - **LANDLORD/**
RESPONDENT

(Being an appeal against the Ruling of Hon. Gakuhi Chege in Nairobi
BPRT E1089 of 2024 delivered on 13/1/2025)

RULING

(In respect of the Tenant/Appellant's application dated 29/05/2025)

1. For determination before this Court is the Tenant/Appellant's application dated 29/5/2025. The application is expressed to be anchored under the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act and Order 40 Rule 3 of the Civil Procedure Rules, 2010. Substantively, the Appellant seeks the following orders;
 - a. That the Respondent be committed to civil jail for a period of Six (6) months or as the court may direct for being in contempt of this Honourable Court's Orders issued on 18/2/2025 by Honourable Lady Justice Grace Kemei.
 - b. That the Court be pleased to halt the proceedings of the Business Premises and Rent Tribunal in Case No. BPRT E1089 of 2024 until the final determination of this Appeal.

- c. That the Appellant and/or its agents herein be restored back to the suit premises pending the hearing and determination of this Appeal.
 - d. That the Officer Commanding Station (OCS) Eastleigh North Police Station ensure enforcement.
 - e. That the Plaintiff bear the costs of this application in any event.
2. The application is founded on the grounds outlined on its face and in the annexed affidavit of Amina Mohamed Omar, the Appellant herein, sworn on 30/5/2025. In this affidavit, the Appellant states that this Court issued stay of execution orders on 18/2/2025 against the Respondent, prohibiting the execution of the ruling delivered on 13/5/2025 by the BPRT for distress of rental arrears. The Appellant contends that notwithstanding these orders, the Respondent visited the BPRT and sought break-in orders dated 21/5/2025 to forcibly enter the Appellant's premises and levy distress for rent, as well as to facilitate the letting of the premises to another tenant. Subsequently, the Respondent unlawfully entered the Appellant's premises in her absence, evicted the occupants, and caused damage to the Appellant's property.
 3. The Appellant contends that the court's directives were issued in the presence of the Respondent's counsel, thereby precluding any claim of ignorance thereof. The Respondent has intentionally and knowingly violated these directives and, as such, should be subject to appropriate sanctions.
 4. She further asserts that, should the proceedings before the BPRT be permitted to continue, she considers herself prejudiced and believes that this appeal is likely to be rendered ineffective. She therefore requests that the court intervene and compel the Respondent to adhere to court orders. Additionally, she contends that her business would be disrupted if the Respondent is permitted to unlawfully lease the premises to another tenant.

Respondent's Replying Affidavit

5. The Landlord/Respondent, Mohamed Hashi Abdi, opposed the application through the Replying Affidavit sworn on 21/7/2025. The Respondent asserts that at the time of acquiring the suit property, it was under the management of Jodar Investment Company Limited. He contends that the Appellant paid rent for a period of seven years before ceasing payments. Furthermore, he states that prior to initiating the proceedings at the Tribunal, the Appellant had locked the premises and discontinued the payment of rent, to his detriment.
6. The Respondent states that he obtained distress for rent orders at the Tribunal, which are the subject of this Appeal. He further asserts that his former legal representative did not inform him that the Appellant had lodged an appeal against the aforementioned orders. When his current counsel reviewed the case file at the Tribunal, he was advised that there were no pending activities concerning the matter. Subsequently, his counsel filed an application dated 20/5/2025 seeking permission to access the suit property in order to lease it to another tenant. The said orders were issued on 21/5/2025 and were successfully executed under the supervision of the Officer Commanding Station at Eastleigh North Police Station. Thereafter, he leased the premises to a new tenant, as evidenced by the Lease Agreement dated 25/5/2025. Following the break-in on 27/5/2025, the new tenant took possession of the premises, and the appellant's goods were stored securely. He affirms that it was only after the breach that his counsel informed him of the stay orders; by that time, he had already executed the orders issued by the Business Premises Rent Tribunal (BPRT).
7. In further response thereto, the Respondent asserts that he has not disobeyed the orders of this court issued on 18/2/2025. He argues that the orders restrained Betabase Auctioneers or its agents from attaching and selling the goods. That the Appellant's goods have not been attached or sold by Betabase Auctioneers but have been kept in secure storage.

He accuses the Appellant of acting in bad faith as she stopped paying rent and locked the premises solely to frustrate him.

8. The Respondent asserts that the requests for reinstatement of the Appellant to the premises are rendered moot due to the existence of a new tenant occupying the premises. He contends that the Appellant will not incur any prejudice, given her rent arrears amounting to Kshs. 675. He consequently requests that the court dismiss the application with costs.

The written submissions

9. On 23 July 2025, the parties elected to canvass the application through written submissions. The Respondent complied and submitted his documentation dated 29/9/25. Conversely, the Appellant/Applicant did not adhere to the deadline despite the extended period granted for compliance. As of 12/11/25, no submissions had been filed. I have considered Respondent's submissions and considered them in this Ruling.

Analysis and Determination

10. Having read and considered the instant Application, Affidavits and the annexures thereto as well as the Respondent's submissions, I am of the considered view find that the issues for determination are;
 - a. Whether the Respondent is in contempt of the court orders issued on 18/2/2025 by this court.
 - b. Whether this court ought to grant stay of proceedings in the Tribunal pending hearing of this appeal.
 - c. Whether the Appellant and/or its agents herein should be restored back to the suit premises pending the hearing and determination of this Appeal.
 - d. Who should bear the costs of the application?

Whether the Respondent is in contempt of the court orders issued on 18/2/2025 by this court

11. A brief chronology of events would suffice to contextualize the application. Vide the application dated 16/1/2025, the Applicant sought the following orders;
 - a. That the Honourable Court be pleased to grant a temporary stay of execution of the ruling delivered on 13/1/2025 pending the hearing and determination of this application.
 - b. That an order in the form of temporary injunction be issued to restraining Betabase Auctioneers, or its agents from attaching and selling the property of the Appellant pending the hearing and determination of this application.
 - c. That the Appellant be granted the costs of this application.
12. On 18/2/2025, the application dated 16/1/2025 was allowed by consent. The order was thereafter extracted as follows;

“That an order in the form of a temporary injunction be and is hereby issued restraining

Betabase Auctioneers, or its agents from attaching and selling the property of the

Appellant pending the hearing and determination of this Application”
13. It is this order that the Respondent is accused of disobeying.
14. Contempt of court is conduct or action that defies or disrespects authority of court. Black’s Law Dictionary 9th Edition at page 360, defines contempt as:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”
15. It is trite law that every person against whom a Court Order is made has unqualified obligation to obey the Order however unpalatable the Order may be until or unless the Order is discharged or set aside.
16. This was the dicta pronounced by the Court in the case of **Hadkinson -vs- Hadkinson, [1952] ALL ER 567** as follows;

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

17. Similarly, Lord Cottenham, L.C., had this to say in the case of **Chuck v Cremer [1] [1 Coop. temp. Cott 342]**:

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it exists it must not be disobeyed.”

18. The standard of proof in such proceedings was articulated by the Court of Appeal in the case of **Mutitika -vs- Baharini Farm Limited [1985] KLR 227** as follows:

“... In our view the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in Court’s determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature...”

19. The test which an Applicant must pass in an application for contempt was laid out in the

case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**, where Mativo J. (as he then was) observed as follows: -

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii) Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -

“There are essentially four elements that must be proved to make the case for civil

contempt. The applicant must prove to the required standard (in civil contempt

cases which is higher than civil cases) that: -

- a. The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. The defendant had knowledge of or proper notice of the terms of the order;
- c. The defendant has acted in breach of the terms of the order; and
- d. The defendant's conduct was deliberate.”

20. In the present matter, I observe that the orders were issued against Betabase Auctioneers and not the Landlord/Respondent herein. Betabase Auctioneers are not parties to these proceedings. The Appellant/Applicant has not demonstrated that the Respondent is an agent of Betabase Auctioneers sufficient to substantiate an allegation of

contempt. Consequently, the Respondent cannot be cited for contempt of court orders that were explicitly not directed at him.

21. I also observe that the terms of the order were provisional in nature. They were intended to be effective during the period of the hearing of the application. However, from the drafting of the application, no substantive orders were to be issued pending the resolution of the Appeal. Once the application was scheduled for hearing, all the prayers contained therein were fulfilled. Consequently, my conclusion is that the terms of the orders issued on 18/2/2025 were ambiguous. The order raises questions regarding which application was to be heard during the pendency of the appeal.

22. Based on the foregoing, I need not address myself to the other elements of contempt of court.

Whether this court ought to grant stay of proceedings in the Tribunal pending hearing of this appeal.

23. The law regarding the stay of proceedings pending appeal is outlined in Section 6 of the Civil Procedure Act, which states that if an issue is directly and substantially in dispute between the same parties, another court should stay its proceedings concerning such a suit.

24. 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.

25. Similarly, in the case of **Christopher Ndolo Mutuku & Another vs. CFC Stanbic Bank Ltd [2015] eKLR**, the court held as follows;

“What matters in an application for stay of proceedings pending appeal is the overall impression the court makes out of the total sum of the circumstances of each which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice.”

26. The **Halsbury’s Law of England 4th Edition Vol. 37 pages 330 and 332** states that;

“The stay of proceedings is a serious, grave, and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the Plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

27. It is therefore clear that in determining whether or not to grant an order for stay of proceedings,

The court must consider the fundamental principle that once a suit is initiated, proceedings should proceed without undue interruption until the case is resolved. This principle is based on the right of every individual to a fair trial, which includes the right to have the trial

commence and conclude without unreasonable delays, as enshrined in Article 50(2)(e) of the Constitution. Additionally, it reflects the well-established maxim that "justice delayed is justice denied," a core tenet guiding courts in exercising judicial authority. Against this backdrop, orders for the stay of proceedings should be granted sparingly and only in exceptional circumstances, which must demonstrate compelling reasons and where proceeding with the suit would be manifestly unjust and unfair.

28. As evidenced by the aforementioned decision, a stay of proceedings necessitates judicial discretion while considering the interests of the involved parties. In the present case, the Appellant contends that permitting the proceedings before the BPRT to continue would result in prejudice to her, potentially rendering this appeal moot. The Appellant has not articulated the manner in which she would be prejudiced. It is insufficient for a party to merely assert that prejudice will occur; rather, she must provide proof of the prejudice she anticipates suffering.
29. It is evident that the Respondent obtained break-in orders on 21/5/2025 and successfully executed them under the supervision of the OCS Eastleigh North Police Station. Subsequently, he leased the premises to a new tenant, as evidenced by the Lease Agreement dated 25/5/2025. The new tenant subsequently took possession of the premises. The Respondent asserts that the appellant's goods were stored in a secure location.
30. It is trite law that an appeal does not operate as an automatic stay of execution or proceedings. Order 42 Rule 6 (1) of the Civil Procedure Rules.

"No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 orders set aside.

31. It is my considered view that the Appellant has not shown the irreparably injury that she is likely to suffer if the proceedings at the Tribunal are not stayed. The injury that the Appellant is apprehensive of has already happened. The Appellant has already been removed from the premises. In the case of **Pius Kipchirchir Kogo versus Frank Kimeli Tenai (2018) eKLR** which describes irreparable injury as one that cannot be adequately compensated by damages. The orders sought in my view have been over taken by events.
32. The Appellant should have sought a stay of execution as well as a stay of proceedings pending the hearing and determination of the appeal, before the Tribunal or this court at the earliest opportunity. Since a stay of proceedings is a discretionary order, the court finds that the Appellant was not diligent in safeguarding her tenancy. Equity assists the vigilant and not the negligent.

Whether the Appellant and/or its agents herein should be restored back to the suit premises pending the hearing and determination of this Appeal.

33. As previously noted, there were no stay of execution orders preventing the Respondent from taking possession of the suit premises. In any case, the Respondent obtained break-in orders from the Tribunal on 21/5/2025. Subsequently, the Respondent leased the premises to a new tenant. In the absence of any application contesting the Tribunal's orders, this Court has no jurisdiction to set aside the orders issued therein. Issuing orders to restore the Appellant to the premises would

effectively amount to this Court overturning the Tribunal's break-in orders without an appeal being filed.

34. Disposal orders

- a. Consequently, I find no merit in the application dated 29/5/2025
- b. It is hereby dismissed.
- c. The Respondent shall have the costs of this application.

35 It is hereby so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF NOVEMBER 2025 VIA MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr Karomo for the Appellant
2. Ms Oketch for the Respondent
3. C/A - Ms. Yvette Njoroge