



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL APPEAL NO. E056 OF 2024

EVA WANGECHI WAIRIUKO.....

APPELLANT

=VERSUS=

DORCAS KHABAKALI LUMUMBA.....

RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 9th April 2025, brought under Order 42 Rule 6 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, in which the Applicant seeks the following orders:

a) Spent.

***b) THAT this Honourable Court be pleased to grant
a stay of proceedings in Business Premises***

Tribunal Case No. E447 of 2024 pending the hearing and determination of this Appeal.

c) THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Eva Wangechi Wairiuko sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that being dissatisfied with the ruling issued by Hon. Cyprian Mugambi Nguthari, she filed an appeal challenging the decision that found she is a landlord of the suit premises. She maintains that she has never been in a landlord-tenant relationship with the Respondent regarding the suit premises. She argued that the appeal raises arguable points of law regarding jurisdiction and the existence of a landlord-tenant relationship between the parties. She asserted that unless the proceedings at the tribunal are stayed, the appeal would be rendered nugatory. Additionally, she argued that the Respondent would not suffer any prejudice if the proceedings are stayed.

4. In conclusion, she urged the court to allow the application as prayed.

THE RESPONDENTS' CASE

5. The Respondent filed a replying affidavit dated 14th May 2025 in opposition to the application. She asserted that the application offends Section 79G of the Civil Procedure Act as it was filed out of time without the court's leave. She argued that the Applicant has been acting as the landlord since she took possession of the premises in 2018.

6. She further averred that she had on several occasions interacted with the Applicant through her mobile number on matters related to her tenancy and had for several years paid her electricity bill through the Applicant's account number. She maintained that the Tribunal has the requisite jurisdiction as the dispute relates to a landlord-tenant relationship. She argued that the Applicant has not produced any documentation to show that the suit property belongs to the alleged stranger.

7. In conclusion, she urged the court to dismiss the application with costs.

8. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

9. The Applicant filed her submissions dated 19th September 2025

10. On behalf of the Applicant, Counsel submitted that the appeal was filed within the time outlined in Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act.

11. Counsel contended that the Applicant is not the landlord of the suit premises and has never received rent from the tenancy at any time. Counsel further contended that the Tribunal lacks jurisdiction to hear and determine the dispute in BPRT No. E447 of 2024. Counsel maintained that the court cannot assume jurisdiction in the matter, as to do so would amount to acting ultra vires. To support this argument, reliance was placed on the case of **Owners of the Motor Vessel M.V Lillian v Caltex Oil (Kenya) Limited (1989).**

12. In conclusion, Counsel urged the court to allow the application with costs.

THE RESPONDENT'S SUBMISSIONS

13. The Respondent filed her submissions dated 8th October 2025.
14. On behalf of the Respondent, Counsel outlined the following issues for the court's determination:-
- a) Whether the Appellant has met the threshold for stay of proceedings as provided by the law.*
 - b) Costs of the application.*
15. Regarding the first issue, Counsel reiterated the contents of the supporting affidavit in support of his submissions. Counsel submitted that no prejudice will be caused if the proceedings of the tribunal are not stayed, as the Applicant can be compensated through costs in the event the Respondent is unsuccessful in her claim.
16. Counsel maintained that there exists a landlord-tenant relationship between the parties and added that the title deed presented by the Applicant is not related to the suit premises. Counsel further submitted that the application offends the provisions of Section 79 of the Civil Procedure Act because it was filed outside the stipulated time lines.

17. In conclusion, Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

18. Having considered the application, the respective affidavits, and the rival submissions, the only issue for determination is whether the proceedings in BPRT Case NO. E447 of 2024 should be stayed.

19. The general principles which guide the grant of stay of proceedings are best summarized in **Halsbury's Law of England, 4th Edition, Vol 37 at pages 330 and 332** as follows:

20. ***"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 proceedings beyond all reasonable doubt ought not to be allowed to continue."***

21. The Court of Appeal in **Paragon Electronics Ltd v Land Registrar & 2 others; Ngum & 2 others (Interested Parties) [2025] KECA 586 (KLR)** set the threshold for the grant of stay of proceedings as follows:-

“.....Applicant must demonstrate the existence of an arguable appeal, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory.....In addition....the Applicant must satisfy the Court that there are exceptional circumstances to warrant stay of proceedings because stay of proceedings is a serious and grave judicial intervention as it has the effect of delaying pending proceedings.”

22. Similarly, in **Kenya Wildlife Service v James Mutembei [2019] eKLR**, it was held that:-

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be

heard without delay, and overall, the right to a fair trial. Therefore, the test for stay of proceedings is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation...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 no cause of action in law or 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 based on the pleading and the facts of the case.”

23. The grant of a stay of proceedings is a discretionary remedy which should be exercised sparingly and only in exceptional circumstances. The court notes that the appeal concerns jurisdictional issues, which are substantive in nature, rendering

it arguable. Additionally, if the case at the BPRT continues and the Court finds that the Tribunal lacked jurisdiction, from the beginning, it could nullify the ongoing proceedings, leading to a waste of judicial resources.

24. It is my considered view that the issue of jurisdiction qualifies as an exceptional circumstance because, without jurisdiction, the Tribunal cannot proceed with the matter.

25. In the end, I find that the application dated 13th February 2025 is merited and the same is hereby allowed as prayed. Costs to abide by the outcome of the Appeal.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 11TH DAY OF DECEMBER, 2025.

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:-

Nandi for the Respondent

Ahmed- Court Assistant