



REPUBLIC OF KENYA



KENYA LAW
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Mark & Jeddy Property Management v Musembi (Environment and Land Miscellaneous Application E296 of 2025) [2025] KEELC 18535 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18535 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E296 OF 2025
MN KULLOW, J
DECEMBER 19, 2025

BETWEEN

MARK & JEDDY PROPERTY MANAGEMENT APPLICANT

AND

MAGDALINE MBULI MUSEMBI RESPONDENT

RULING

1. Through a Notice of Motion Application dated 17th September 2025 brought under Section 8 of the [Rent Restriction Act](#) (Cap 296) Laws of Kenya, Order 40 Rule 7 of the Civil Procedure Rules, 2010, Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law, the Applicant moved this Court seeking the following orders:
 - a. Spent.
 - b. That the ex-parte warrants of arrest issued in RRC/1393/2025 on 4th September 2025 by the Honourable Tribunal against the Applicant through the OCS Muthangari Police Station be lifted, set aside or stayed pending the hearing and determination of the Application.
 - c. That the ex-parte orders issued in RRC/1393/2025 on 6th August 2025 and 13th August 2025 be varied, lifted, vacated and/or set aside for having been obtained ex-parte in the absence of the Applicant and his representatives.
 - d. That the Honourable Tribunal be ordered to strike out the Respondent's ex-parte Applications dated 6th August 2025 and 11th August 2025 for being contrary to the principle of audi alteram partem, which requires that no person should be condemned unheard.
 - e. That the current status quo be maintained pending the hearing and determination of the Application.
 - f. That the costs of the Application be awarded to the Applicant.



2. The Application is premised on the grounds that the impugned orders and warrants were issued ex parte without affording the Applicant an opportunity to be heard, and in circumstances where it is contended that the tribunal acted without jurisdiction. It is further contended that the Respondent obtained the said orders through non-disclosure and misrepresentation of material facts, and that the continued enforcement thereof has exposed the Applicant to prejudice and hardship.
3. In the Supporting Affidavit sworn 17th September 2025 by Vincent Oginga, the deponent averred that the Respondent had already vacated the suit premises prior to instituting the proceedings before the tribunal, and that the Applicant was neither served with the applications nor afforded an opportunity to participate in the proceedings leading to the issuance of the impugned orders and warrants. The deponent further set out the circumstances under which the orders were issued and contended that the tribunal lacked jurisdiction to entertain the matter.
4. The Application was further supported by a Supplementary Affidavit sworn on 28th November 2025, in which the deponent clarified the sequence of events before the tribunal, annexed copies of the applications, orders and warrants complained of, and deponed that despite the Applicant having sought relief before the tribunal, the tribunal proceeded to issue warrants of arrest without considering the Applicant's application. The deponent reiterated that the proceedings were conducted in violation of the principles of natural justice.
5. When the matter came up for mention on 20th November 2025, the Court confirmed that service of the Application had been duly effected upon the Respondent as evidenced by the Return of Service dated 5th August 2025. The Application is therefore unopposed. The Court further notes that despite directions having been given, the parties did not file any written submissions.

Legal Analysis

6. The instant Application seeks orders for the lifting, variation, stay and/or setting aside of ex-parte orders and warrants issued by a subordinate tribunal. The guiding provision of law applicable to such an Application is to be found under Order 40 Rule 7 of the Civil Procedure Rules, 2010, which provides as follows: "Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order
7. The above provision clearly vests this Court with the discretion to discharge, vary or set aside ex-parte orders where sufficient cause is shown. That discretion, however, must be exercised judiciously and in a manner that advances the ends of justice.
8. Further, the Court's jurisdiction is buttressed by Section 3A of the *Civil Procedure Act*, which preserves the inherent power of the Court in the following terms: "Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."
9. It is therefore not in doubt that this Court has the authority to intervene where it is alleged that ex-parte orders have been issued in circumstances that occasion injustice or amount to an abuse of the court process.
10. The principles guiding the exercise of judicial discretion in applications for setting aside ex-parte orders are now well settled. In *Patel v E.A. Cargo Handling Services Ltd (1974) EA 75*, the Court held: "There are no limits or restrictions on the Judge's discretion to set aside or vary an ex-parte judgment except that if he does vary the judgment, he does so on such terms as may be just. The main concern of the Court is to do Justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given to it by the Rules."



11. Similarly, in *Mbogo & Another v Shah* (1968) EA 98, the Court stated: “I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matter on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. It is for the company to satisfy this court that the judge was wrong and this, in my view it has failed to do.”
12. These authorities underscore the principle that while discretion is wide, it must be exercised to prevent injustice and to ensure that parties are not unfairly prejudiced by procedural lapses.
13. It is also a cardinal principle of law that no person should be condemned unheard. The right to be heard, embodied in the rule of *audi alteram partem*, permeates the entire justice system. In *James Kanyiiita Nderitu & Another v Marios Philotas Ghikas & Another* [2016] eKLR, the Court of Appeal emphasized that: “The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system.”
14. Accordingly, where *ex-parte* orders are issued, the Court must be satisfied that the circumstances justified such a course and that the affected party is afforded an opportunity to be heard. Where that threshold is not met, the Court is entitled to intervene in order to uphold the integrity of the judicial process and to ensure that justice is done.
15. Applying the foregoing principles to the present Application, the Court is satisfied that the Applicant has established sufficient grounds to warrant the exercise of this Court’s discretion. The Application raises serious issues touching on the propriety of the *ex-parte* process, the right to be heard and the need to prevent abuse of process. In the circumstances, and noting that the Application is unopposed, the Court finds that the interests of justice demand that the impugned *ex-parte* orders and consequential processes be interfered with to allow the issues raised to be addressed in a fair and orderly manner.
16. The Court is further persuaded that failure to intervene at this stage would occasion prejudice and undermine the fundamental principles of natural justice. Consequently, the Court finds and holds that the Application is merited.
17. In the upshot, the Court makes the following orders:
 - a. That the *ex-parte* warrants of arrest issued in RRC/1393/2025 on 4th September 2025 by the Honourable Tribunal against the Applicant through the OCS Muthangari Police Station are hereby lifted and set aside.
 - b. That the *ex-parte* orders issued in RRC/1393/2025 on 6th August 2025 and 13th August 2025 are hereby varied, lifted and set aside.
 - c. That the proceedings arising from the Respondent’s *ex-parte* Applications dated 6th August 2025 and 11th August 2025 are hereby set aside.
 - d. That Rent Restriction Tribunal Case No. RRC/1393/2025 is hereby remitted back to the Rent Restriction Tribunal for hearing and determination on merit *inter partes*, before a different member of the Tribunal.
 - e. That pending the hearing and determination of RRC/1393/2025, the status quo obtaining prior to the issuance of the impugned *ex-parte* orders shall be maintained.
 - f. That the costs of this Application shall abide the outcome of the proceedings before the Tribunal.



It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 19TH DAY OF
DECEMBER, 2025.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Njau for the Applicant

No Appearance for the Respondent

Philomena W . Court Assistant

