

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLA NO. E033 OF 2025

JAMES NYAKEOGA ABUKI APPELLANT

VERSUS

KENNEDY OSORO NYOKA T/A OSOMBESE INVESMENT

LTD..... RESPONDENT

RULING

1. Before me is an application dated 12 September 2025 filed by the appellant. The substantive order sought is for stay of execution of the ruling/order given by the Business Premises Tribunal (the Tribunal) on 14 August 2025 in the Kisii BPRT Case No. E067 of 2024, pending the hearing and determination of this appeal. The application is opposed.
2. I have seen the ruling of 14 August 2025. I can see that the respondent herein, as landlord, had filed an application seeking leave to levy distress against the appellant/applicant, for rent in the sum of Kshs. 4,075,778/= as at 31 May 2025, over the premises Kisii Municipality/Block III/312, Maoso Plaza. It was averred that the monthly rent was Kshs. 199,750/= with service charge of Kshs. 1,550/=, and the landlord complained of inconsistent payments, which pattern led to the accumulation of the rent arrears claimed. The applicant/tenant filed a replying affidavit to oppose the claim. He particularly contended that he deserved credit of Kshs.2,000,000/= for renovations, an advance of Kshs. 1,500,000/= made to the deceased landlord, and a waiver of rent of Kshs.1,224,556/= due to Covid-19. He relied on an alleged further tenancy agreement dated 15 December 2021, allegedly signed by the now deceased original landlord, which was disputed by the respondents. In the impugned ruling, the Member of the tribunal who heard the case was not persuaded of the authenticity of this alleged agreement of 15 December 2021, and found that the landlord had a valid claim for rent arrears of Kshs. 4,075,778/=.
3. Aggrieved, the tenant has preferred an appeal against the said ruling and now seeks stay pending appeal. He of course still asserts that there was an agreement to reduce and waive the rent and contends that the tribunal erred in dismissing its authenticity.

4. In reply, the respondents aver that after the ruling, they appointed an auctioneer who proclaimed the goods in the premises. It is alleged that the applicant locked the premises, which is used as a hotel and lodging, and carted away the valuable goods. Consequently they obtained a breaking order but the auctioneer only found few goods of limited value. According to the respondent, the applicant has already moved out of the premises. The applicant filed a supplementary affidavit refuting this, and contended that it is the respondent who is taking advantage of the ruling to evict him.

5. I have taken note of all the foregoing together with the submissions of counsel. I opt not to go into the issue of whether or not the respondent has illegally taken over the premises. If any party wishes to have substantive orders on that, an application may be filed. What I have before me is an application for stay of execution and I remain focused on that. Order 42 Rule 6(2) applies and it provides as follows :

(2) No order for stay of execution shall be made under subrule (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.

6. The above law informs the court not to make an order of stay of execution unless the court is satisfied of three things, being :

(i) That the applicant stands to suffer substantial loss.

(ii) That the application has been made without unreasonable delay.

(iii) That there is provided such security for the due performance of the decree in the event that the applicant loses the appeal.

7. I will start with the principle relating to delay. I observe that the applicant filed his application on 15 September 2025 yet the impugned ruling was delivered on 14 August 2025. There was already proclamation on 22 August 2025 which proclamation expired on 5 September 2025. There was already issued a breaking order and the goods of the applicant attached. In those circumstances, I am of opinion that the applicant is guilty of laches. He ought to have moved court immediately after the ruling, or at the latest, immediately upon proclamation and before the time for proclamation had expired. As it is, the right to attach the goods had already crystallised by the time the applicant was

coming to court. In my opinion, in the circumstances of this case, he is guilty of unreasonable delay.

8. Having failed the test of delay, this application is for dismissal and it is hereby dismissed with costs. The result is that the applicant will need to pursue his appeal without the benefit of an order of stay of execution pending appeal.
9. Orders accordingly.

DATED AND DELIVERED THIS 18 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Kerongo for the respondent

No appearance on part of the applicant

Court Assistant – Michael Oyuko