REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELCA NO. E046 OF 2025

DR. CHRISTOPHER WATHAKA KARITU…… APPELLANT

-VERSUS-

LUCY NJOKI NJERU……RESPONDENT

RULING

1. Before me is a notice of motion application dated 17.12.2025 where the appellant is seeking the following orders;

> **"Pending the hearing and determination of the instant Appeal, there be a stay of implementation, enforcement and/or execution of the notice of increment of rent and all consequential orders arising from the proceedings and rulings in NAKURU BPRT NO. E068 OF 2024"**

2. The application is premised on grounds on the face of the application and on the supporting affidavit of the applicant where he depones as follows;

> **"1. That I am the appellant/applicant herein and therefore competent to swear this supporting affidavit.**
>
> **2. That I am a tenant in a business premises owned by the late Waweru Gathrimu (Deceased) which is managed by Judika Agency.**
>
> **3. That I was served with a notice of increment of rent from Kshs. 28,000/= to Kshs. 80,000/= by the respondent under Section 4 (2) of Cap. 301, Laws of Kenya dated 18th April 2024 (annexed hereto and marked CWK-1 is a copy of the said notice)**
>
> **4. That I lodged a reference on 13th May 2024 against the said notice at the Business Premises Rent Tribunal vide**

NAKURU BPRT NO. E068 OF 2024 (Annexed hereto and marked CWK-2 is a copy of the said reference)

5. **That after several mentions, the reference after several mentions the reference was set down for hearing on 20th February 2025 by the Tribunal's on its own motion in our absence but I was not notified of the hearing date.**
6. **That as a result, I did not attend court on the said hearing date and my reference was dismissed.**
7. **That I subsequently sought for reinstatement of the reference vide my application dated 7th March 2025 which was favourably considered by the tribunal allowing reinstatement of my reference in a ruling delivered in my absence on 30th June 2025 but in the presence of the respondent's advocate**

(annexed hereto and marked CWK-3 (a) and (b) is a copy of the said application and ruling respectively).

8. **That after delivery of the said ruling, the tribunal gave a mention date of 10th July 2025 for directions and directed the landlord's advocate to serve me with notice.**
9. **That I was not served with a mention notice and a perusal of the tribunal's record reveals that on the said date, none of the parties attended court as a result of which the matter was again set down for mention on 21st July 2025 with a rider for a mention notice to issue.**
10. **That again, no mention notice was served upon both parties by the tribunal and none of us attended court on 21st July 2025 when the matter was set down for hearing on 17th August 2025.**

11. That on 17th August 2025, the respondent's advocate appeared in court and applied for dismissal of my case despite having not been served with a hearing notice and as a result, my reference was dismissed for a second time for non-attendance.

12. That I subsequently filed an application dated 12th August 2025 seeking for setting aside of the dismissal order of 17th August 2025 on grounds that I was not aware of the hearing date since no notice had been served upon me (annexed hereto and marked CWK-4 is a copy of the said application).

13. That my said application was canvassed through written submissions and was dismissed through a ruling delivered on 4th November 2025 which I have herein appealed against (annexed hereto and

marked CWK-5 is a copy of the said ruling).

14. That one of the reasons given in the ruling was that I was not a serious litigant having failed to attend court twice although the tribunal failed to take into account the fact that I was unaware of the hearing dates and that I had all along acted in person.

15. That all along I was desirous of having my reference heard and determined merits and to prove my seriousness, I had on all previous occasions attended court and even caused a rent valuation report to be prepared and filed at the tribunal which was also served upon the respondent (annexed hereto and marked CWK-6 is a copy of the valuation report).

16. That the valuation report which was not challenged showed that the fair current

market value for the space I occupy is Kshs. 35,000/= which I expected the tribunal to adopt but my reference was unprocedurally dismissed despite being unaware of the hearing date set by the said court.

17. **That I am a Veterinary Doctor by profession and the said business premises is all I depend upon for my livelihood and forcing me out of it through unreasonable rent demand would render me jobless which will be unfair not only to me but to my family and employees.**
18. **That it is fair and just that all orders by the tribunal at the time of dismissing my said application be stayed pending the hearing and determination of my appeal.**
19. **That by reason of the foregoing, I stand to suffer substantial loss and damage in**

that I cannot afford to pay the new rent, as well as my employees neither will I be able to support my family unless the orders sought are granted

20. That the respondent through her advocates have now demanded for payment of the new rent plus costs of the suit which I am unable to pay on account of the prevailing economic situation in the country.

21. That in view of the foregoing reasons, it is only fair and just that my application herein be allowed since my appeal has overwhelming chances of success.

22. That I make this affidavit in support of my application for stay of implementation of the notice of increment of rent and execution of the Business Premises Rent Tribunal orders from facts within my own knowledge, information and belief".

3. The application was served but no response was filed, thus the application is unopposed. In the Supreme Court of Kenya case of **Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR**, the court had this to say in regard to an unopposed application;

> **"Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of cause grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted".**

4. Thus the court will consider the merits of the application and determine if the prayer for stay is merited.

5. The relief of stay of execution pending Appeal is governed by Order 42 Rule 6 of the Civil Procedure

Rules. In **Loice Khachendi Onyango v Alex Inyangu & another [2017]_eKLR** the court held that;

> **"The relief is discretionary but the discretion must be exercised judiciously and upon defined principles of law; not capriciously or whimsically. Therefore, stay of execution should only be granted where sufficient cause has been shown by the Applicant….."**

6. Has the applicant established sufficient cause? It is noted that the case of the applicant was dismissed twice before the tribunal.

7. In exercising judicial authority the courts and tribunals have a duty to facilitate just and expeditious determination of proceedings. One of the cardinal principles in our constitution is "the expeditious delivery of justice" –see Article 159 (2) (b) of the Constitution of Kenya, which in effect codifies the 17th century maxim *"Justice delayed is justice denied"*. This means that if justice is not provided in a timely manner to the parties,

it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide. See; **Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & another [2019] eKLR.**

8. I have taken steps to recapture the verbatim averments of the applicant where it was revealed that his case was dismissed twice and reinstated once. The applicant has not demonstrated the efforts he was making to prosecute and progress his case from the time he filed the first application for reinstatement of his suit dated **7.3.2025**. He was even absent on **30.6.2025**, when ruling was delivered in his favour. it is trite law that the responsibility to prosecute a suit, rests on the shoulders of a litigant and not her counsel, the opponent or the court, See **Mwangi Gachiengu & 2 Others –Vs- Mwaura Githuku & Another – (2019)eKLR.** The applicant only talks of the tribunal giving this and that date, yet he never took a single step for the progression of his case, particularly after the suit was reinstated.

9. When parties fail to take steps for the progression of their cases, a court or tribunal has a constitutional mandate to ensure that a matter is disposed of expeditiously.

10. *"Once bitten twice shy"* is a proverb meaning that a painful experience makes people cautious of repeating it. This proverb ought to have pricked the conscience of the applicant after the ruling of **30.6.2025** where his suit was reinstated, but it didn't. He just continued on and on with his previous lamentations about not being served with this and that date as if the case belonged to his opponent or the court.

11. The sloppy conduct of the applicant is also manifested in these proceedings whereby he has apparently availed 6 annexures marked as CWK 1-6 to support his application. However, the documents availed in the CTS have been filed haphazardly on different dates. These document are; a notice dated 27.8.2024, a demand for rent arrears from Mathea and Gikunju advocates and another immaterial document. He has not availed the

crucial documents which are the rulings from the tribunal dated 30.6.2025 and most importantly the one dated 4.11.2025. These rulings could have shed some light as to how the proceedings before the tribunal were conducted.

12. Another point for consideration is that the applicant's suit before the tribunal was dismissed, thus no positive orders were granted. See **Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya) 2015 Eklr.** In that regard, the application must fail.

13. In the case of **Equity Bank Limited-vs- West Link MBO Limited- Civil Application No. 78 of 2011,** cited in **Dickson Muricho Muriuki v Timothy Kagondu Muruiki & 6 others [2013] eKLR**, the court stated that;

> **"Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the**

confines of law, to ensure the ends of justice are met."

14. In **Fran Investments Limited vs G4S Security Services Limited [2015] eKLR** the court stated that;

"The Applicant is not a vigilant litigant and in accordance with the maxim of equity that equity aids the vigilant and not the indolent, the Applicant should not be allowed to reap from his indolence".

15. The applicant laments that he was not considered a serious litigant before the tribunal. I hold the same view, where by the applicant wants to reap from his indolence. Thus the justice of the day does not warrant the issuance of the orders sought. I therefore find that the application dated 17.12.2025 is not merited, the same is hereby dismissed but with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 19TH DAY OF MARCH 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Appellant present in person

Court Assistant – Nancy Mwangi