

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELCLA NO. E032 OF 2026**

**OSWEA PHELIX .....**

**.....APPELLANT**

**=VERSUS=**

**MELROK ENERGY LIMITED .....1<sup>ST</sup>**

**RESPONDENT**

**AUCKLAND AGENCIES AUCTIONEERS ..... 2<sup>ND</sup>**

**RESPONDENT**

**RULING**

***(Extempore)***

1. This is a ruling delivered in respect of the application dated 31st March 2026 by the Applicant which seeks reopening and restoring the Applicant into the premises and to cite the Respondents for contempt of the orders of this Court issued on 9th March 2026.
2. On 19th February 2026, the Business Premises and Rent Tribunal dismissed the Applicant's substantive reference and ordered payment of rent arrears amounting to over Ksh 900,000. Aggrieved by the decision, the Applicant filed

the present appeal together with an application for stay of execution.

3. By order dated 9th March 2026, this Court granted a conditional stay of the Tribunal's decision in so far as it related to payment of the arrears. The condition imposed was that the Applicant pays Ksh 600,000 within 30 days from 9th March 2026, failing which the stay would automatically lapse.
4. On 30th March 2026, the Respondent locked the Applicant out of the premises, relying on a statutory notice of termination of tenancy issued on 27th January 2026, which the Respondents claimed had by then lapsed.
5. The Applicant contends that the lockout was effected while the conditional stay remained in force as the 30-day compliance period not having lapsed and therefore amounts to contempt of the orders of this Court issued on 9th March 2026. The Applicant accordingly prays for reopening and restoring the Applicant into the premises forthwith and for citation of the Respondents for contempt.
6. The Respondents opposes the application, arguing principally that this Court lacks jurisdiction, that the issue

of termination of the tenancy was never before the Tribunal or this Court. The Respondents therefore urges the Court to dismiss the application.

7. The Court has framed the following two issues for determination; whether this Court has jurisdiction to entertain the application and what are the appropriate reliefs to grant at this stage.
8. On the issue of jurisdiction, this Court has jurisdiction to consider and determine issues of contempt arising from the alleged breach of its own orders once such issues are properly raised by a party. The power to punish for contempt is inherent in superior courts and is necessary to uphold the dignity and authority of the Court. This Court is empowered to address allegations of disobedience of its orders.
9. Where a party alleges contempt of a Court order, the Court will hear the application, afford both parties an opportunity to be heard and where necessary, grant the respondent an opportunity to file a formal response to the specific allegations of contempt. In the present case, the Respondents have not filed a specific response or reply

directed at the contempt allegations. The Court cannot, at this stage, make a final and conclusive determination on the question of contempt without affording the Respondents a full opportunity to address the contempt issues squarely. The jurisdictional objection raised by the Respondent is therefore overruled to the extent that it challenges the Court's power to inquire into whether its own conditional stay order has been breached. The Court will determine the contempt application fully after the Respondents have been granted an opportunity to file a response to the contempt allegations.

10. The Applicant has also sought reopening and restoring him into the premises. Disputes concerning termination of a controlled tenancy, the validity or effect of a statutory termination notice, and recovery of possession fall within the exclusive original jurisdiction of the Business Premises and Rent Tribunal under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301). The issue of termination of the tenancy based on the statutory notice issued on 27th January 2026 was not the subject of the Tribunal's ruling of 19th February 2026 and

is therefore not before this Court in the present appeal. This Court, being seized only with the appeal against the Tribunal's decision on rent arrears, cannot in these proceedings assume original jurisdiction over a separate termination dispute that was never adjudicated by the Tribunal.

11. In the circumstances, the Court declines to grant an order for reopening of the premises and restoration of the Applicant into possession at this stage.

12. In light of the above, the Court makes the following orders:

**i) The prayer for immediate reopening of the premises and restoration of the Applicant into possession is declined at this stage.**

**ii) The Respondent shall, within 2 days from today file and serve a response specifically addressing the allegations of contempt of the orders of this Court issued on 9th March 2026.**

**iii) The Applicant have corresponding leave of 2 day upon service to file further affidavit if need be.**

- iv) **The same shall be heard on 14<sup>th</sup> April 2026 alongside the pending application dated 26<sup>th</sup> February 2026.**
- v) **Costs to be determined alongside the pending application.**

**Dated, Signed and Delivered Virtually this 7<sup>th</sup> day of April, 2026.**

**E. K. WABWOTO  
JUDGE**

**In the presence of: -**

**Mr. Nduati for the Applicant.**

**Ms. Mbugua for the Respondents.**

**Court Assistant: Mary Ngoira.**