

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLA NO. E039 OF 2026

DEL VALLE LIMITED.....

.....APPELLANT

=VERSUS=

VEERAL SHAH AND ROMA WADHWA.....1ST

RESPONDENT

DUNHILL CONSULTING LIMITED.....2ND

RESPONDENT

RULING

1. This ruling is in respect to the Appellant's application dated **8th March 2026** seeking stay of execution of the ruling and orders of **Hon. M. Kurumbu (Mrs) P.M. delivered on 5th March 2026 in Milimani MELC E354 of 2024 Del Valle Limited v Veeral Shah, Roma Wadhwa & Dunhill Consulting Limited** and an alternative order for maintaining of the status quo pending the hearing and determination of the appeal.
2. The application is premised on the grounds on its face and supported by the affidavit of **Gattuso Kamau Nga'anga**

sworn on **8th March 2026**. It is opposed by the 1st Respondent through the replying affidavit of **Veeral Shah** sworn on **17th March 2026**.

3. Pursuant to directions of this Court, the application was canvassed by way of written submissions filed by the Appellant on **21st March 2026** and by the Respondents on **1st April 2026**.
4. The dispute concerns the Appellant's occupation of the suit premises known as **L.R. No. 209/64/16 situate along Mogotio Road, Westlands**, Nairobi, pursuant to a Lease Agreement dated **18th June 2020** between the Appellant and the 1st Respondent for a fixed term of 5 years and 3 months that expired by effluxion of time on **30th September 2025**.
5. On **9th August 2024** the Appellant filed an interlocutory application seeking to restrain eviction. That application was dismissed on **18th September 2025**. Prior thereto, the 1st Respondent had served notices of non-renewal dated **26th August 2025** and **18th September 2025**.
6. After the lease expired, the 1st Respondent filed the application dated **21st November 2025** seeking a

mandatory injunction compelling the Appellant to vacate forthwith and, in default, authorising forceful eviction with police assistance.

7. On **5th March 2026** the learned Magistrate allowed the application in its entirety and ordered the Appellant to vacate within 7 days, failing which the Respondents were at liberty to evict with police supervision.
8. The Appellant's case is that the eviction order was premature, drastic and issued at an interlocutory stage, thereby summarily determining the suit without a full hearing on the merits and without any prayer for eviction in the Respondents' defence or counterclaim. The Appellant contends that it has lodged a substantive appeal raising weighty arguable points, that eviction would occasion irreparable harm and render the appeal nugatory, and that the balance of convenience favours preservation of the status quo. It has offered to provide security for the alleged rent arrears.
9. The Respondents' case is that the lease expired on **30th September 2025** by effluxion of time, no renewal or holding-over with consent occurred, and the Appellant was

duly notified. Continued occupation constitutes trespass. The learned Magistrate correctly exercised jurisdiction to grant a mandatory injunction. The Appellant has no legal or equitable right to remain in occupation and owes substantial rent arrears of **Kshs. 11,005,763.51** as at March 2026. Granting stay would occasion substantial prejudice to the 1st Respondent by depriving it of possession, use, enjoyment and mesne profits, and would amount to this Court rewriting an expired contract. The application is a deliberate attempt to delay justice.

10. Having considered the application, the supporting and replying affidavits together with their annexures, the rival submissions and the authorities cited, the sole issue for determination is whether the Appellant has made out a case for the grant of the stay of execution orders sought or the alternative prayer for an order maintaining the status quo pending the hearing and determination of this appeal.

11. The jurisdiction of this Court to grant stay pending appeal is conferred by **Order 42 Rule 6(1) and (2) of the Civil Procedure Rules, 2010**. No appeal operates as a stay unless the Court so orders. Sub-rule (2) is in

mandatory terms: no order for stay shall be made unless the Court is satisfied that (a) substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and (b) such security as the Court orders for the due performance of the decree or order as may ultimately be binding upon the applicant has been given.

12. The principles governing the grant of stay are now settled. In the locus classicus **Butt v Rent Restriction Tribunal [1982] KLR 417**, the Court of Appeal held that the applicant must demonstrate an arguable appeal (not necessarily one that must succeed), that substantial loss will result if stay is refused, and that the balance of convenience favours the grant of stay so that the appeal is not rendered nugatory. The Court of Appeal has consistently reiterated that an arguable appeal is one which raises a bona fide triable issue and is not frivolous; it need not be one which is bound to succeed see the cases of **Vishva Stone Suppliers Company Limited v RSR Stone (2006) Limited [2020] eKLR; Stanley**

Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013]

eKLR applied in numerous subsequent decisions.

13. The Appellant raises two main grounds: (a) that the eviction order was premature and amounted to a final determination of the suit at an interlocutory stage without a full hearing on the merits; and (b) that the Respondents' application lacked procedural foundation as no prayer for eviction appeared in their defence or counterclaim.

14. A central plank of the Appellant's case is that the eviction order summarily determines the suit without hearing the parties fully. It is trite that a mandatory injunction at the interlocutory stage is an exceptional remedy granted only in clear and exceptional circumstances where the court has a high degree of assurance that the order would be justified at trial. See the cases of **Giella v Cassman Brown (1973) EA 358;** **Kenya Breweries Ltd v Washington Okeyo (2002) EA 109;** **Locabail International Finance Ltd v Agro Export [1986] 1 All ER 901** and **Maher Unissa Karim v Edward Oluoch Odumbe [2015] KEHC 4029 (KLR).**

15. However, the core facts are undisputed on the record: the fixed-term lease expired by effluxion of time on 30th September 2025, notices of non-renewal were duly served, and no evidence of any extension, renewal or consensual holding-over has been adduced. The learned Magistrate expressly captured this at page 3 of the ruling. In such clear cases of trespass following expiry of a lease, superior courts, including this Court, have consistently upheld the jurisdiction of the trial court to grant a mandatory injunction compelling vacation even at interlocutory stage. See the cases of **Maheer Unissa Karim (supra); Nancy Otieno Ouma v Joseph Kaloki t/a Royal Family Assembly [2019] eKLR**, upheld on appeal **Joseph Kaloki t/a Royal Family Assembly v Nancy Otieno Ouma [2020] eKLR**). This position was affirmed in the case of **Elgon House (2010) Ltd v Meya Agri Traders Limited [2026] KEELC 911 (KLR)**, where a lease that had expired by effluxion of time in 2013 without renewal led to a finding that the tenant's continued occupation was illegal trespass; the Court granted orders for vacant possession and emphasised that

“the lease cannot be extended beyond its expiry date in the absence of any agreement to that effect” and that holding over post-expiry renders the occupant a trespasser (paras 58, 68-69, citing **Relisa Housing Co-operative Society Ltd v Grace Atieno & another [2004] eKLR and R&K Investments v Evanson Gitau [1998] eKLR**).

Similarly, in **Cause Impact Limited v Trustees & 2 others [2022] KEELC 75 (KLR)**, the Court dealt with a tenant holding over after lease expiry on 20th October 2020 and declined interlocutory injunctive relief pending appeal where the facts disclosed no continuing legal right to occupation, underscoring that injunctions or stays cannot be granted in a vacuum absent a clear legal basis. The order does not finally determine the entire suit as other issues remain open for full adjudication on the merits. The Appellant was fully heard on the application, and the main suit is still pending. The contention that the order summarily determines the suit without a hearing is therefore not sustainable.

16. While the Appellant’s procedural points raise arguable questions worthy of consideration on appeal (in

line with **Vishva Stone Suppliers (supra)** that an appeal need only raise a bona fide issue and need not necessarily succeed), the substantive right to continued occupation after expiry of the lease is weak. A tenant cannot impose itself on an unwilling landlord once the lease has terminated by effluxion of time.

17. On substantial loss, the Appellant claims irreparable harm from eviction and offers security. Loss arising from cessation of an unlawful occupation after the lease expired by effluxion of time is not the species of “substantial loss” protected under **Order 42 Rule 6(2)(a) Butt (supra); Safaricom Limited v Ocean View Beach Hotel Limited [2010] eKLR**. Any inconvenience or business disruption is compensable in damages in the main suit if the Appellant ultimately succeeds. Conversely, the 1st Respondent has been kept out of its property since October 2025 and continues to suffer loss of use and mesne profits while arrears of **Kshs. 11,005,763.51** accumulate. The Appellant’s offer of security does not cure the absence of any legal right to occupy nor does it

adequately protect the 1st Respondent's proprietary interest.

18. On the balance of convenience, granting stay would permit the Appellant to remain in occupation without any subsisting lease or payment obligation, effectively extending the expired contract by judicial intervention. This Court cannot rewrite contracts or extend expired leases. Refusing stay preserves the 1st Respondent's lawful proprietary rights while the main suit and appeal proceed on their merits. The substratum of the appeal is not destroyed; the appeal can be heard on the existing record without prejudice.

19. The application was filed without unreasonable delay. However, the three limbs of Order 42 Rule 6(2) are conjunctive. The Appellant has satisfied only the delay limb. It has failed to demonstrate substantial loss or that the balance of convenience tilts in its favour. The appeal, though arguable on procedure, does not justify perpetuating what the lower court correctly found to be an unlawful occupation. Granting stay or the alternative order

for status quo would not preserve the status quo but would instead occasion continuing prejudice to the Respondents.

20. On the question of costs, although the Respondents have succeeded, I am satisfied that this is a proper case in which each party should bear its own costs of the application. There is a pending suit before the lower court together with this appeal and in the circumstances, it would not be just to saddle the unsuccessful party with costs. Each party shall therefore bear its own costs of the application.

21. In the end, it is the finding of this court that the Appellant has not made out a case for the grant of the reliefs sought. Accordingly, the court makes the following orders: -

(i) The Appellant's application dated 8th March 2026 is hereby dismissed.

(ii) Each party to bear own costs of the application.

Dated, Signed and Delivered Virtually this 14th day of April, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

Mr. Mwangi for the Appellant.

Mr. Wandati for the 1st Respondent.

N/A for the 2nd Respondent.

Court Assistants: Mary Ngoira and David Ngoosa.

ORIGINAL