

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLA NO. E032 OF 2026

OSWEA PHELIX

.....APPELLANT

=VERSUS=

MELROK ENERGY LIMITED1ST

RESPONDENT

AUCKLAND AGENCIES AUCTIONEERS 2ND

RESPONDENT

RULING

1. This ruling is in respect to two applications; the application **dated 25th February 2026 and 31st March 2026.**

Pursuant to the directions issued by this Court, both applications before the Court were directed to be canvassed together to enable the Court to render a comprehensive ruling on the same.

2. The two applications are as follows:

(i) The Appellant’s Notice of Motion dated **25th February 2026** seeking, inter alia, orders of stay of execution of the Business Premises Rent Tribunal (BPRT) ruling delivered on

19th February 2026 in BPRT Case No. E1385 of 2025, and a temporary injunction restraining the Respondents from levying distress for rent, auctioning goods, evicting or interfering with the Appellant's possession of Shop No. 3 on L.R. No. 136/7879 pending the hearing and determination of the appeal; and

(ii) The Appellant's Notice of Motion dated **31st March 2026** seeking orders citing the 1st Respondent and its directors Peter Gakungi Kuria and Felicity Muthoni Gatiu for contempt of the interim orders of this Court issued on 9th March 2026, together with consequential orders for restoration of possession and other relief.

3. The first application is supported by the Supporting Affidavit of the Appellant sworn on 25th February 2026 with annextures including the BPRT ruling and Memorandum of Appeal and the Further Affidavit sworn on 9th April 2026.

4. The second application is supported by the Supporting Affidavit of the Appellant sworn on **31st March 2026** with annextures including the CR12, correspondence and the termination notice.

5. The Respondents filed a Replying Affidavit sworn by **Peter Gakungi Kuria on 7th April 2026** in response to the contempt application, together with the Notice of Preliminary Objection dated 7th April 2026. The Appellant filed Further Affidavits dated **9th April 2026** in response to the replying affidavit.
6. Written submissions were filed by the Appellant in support of both applications and the Respondents opposing through the replying affidavit and Preliminary Objection. The parties were also granted an opportunity to highlight their respective written submissions orally during the hearing on **14th April 2026**.
7. **On 9th March 2026**, this Court had granted interim conditional stay of execution of the BPRT ruling upon the Appellant paying Kshs. 600,000/= within thirty (30) days. The Appellant complied with the said condition by effecting payment on **7th April 2026**.
8. **On 14th April 2026**, this Court further issued interim orders granting the Appellant limited access to the premises between 2:00 p.m. on 14th April 2026 and 4:00 p.m. on 15th April 2026 for the purpose of collecting

perishable items and foodstuffs, with an inventory to be taken in the presence of the Landlord or its representative.

9. The Court also directed that the prevailing status quo as at 14th April 2026 be maintained until 30th April 2026, the status quo being that the Appellant shall remain in the premises but shall not operate his business therein until delivery of this ruling. The parties were further directed to engage in amicable settlement of the dispute.

10. The appeal itself arises from the Tribunal ruling delivered on **19th February 2026** by **Hon. Patrick Kitur**, a copy of which is annexed to the Appellant's supporting affidavit.

11. Some aspects of the applications had thus been dealt with earlier. What remains pending for determination are the substantive prayers for stay of execution pending appeal, the grant of a temporary injunction, and the citation of the Respondents for contempt of Court.

12. The Appellant's case, as set out in the affidavits, written skeleton submissions and oral highlights by **Learned Counsel Mr. Nduati**, is that an injustice was

occasioned by the BPRT. Reference is made to paragraph 5 of the BPRT ruling.

13. Counsel submitted that the Tribunal delivered a ruling on both the Motion and the Reference, yet the Appellant was only expecting a ruling on the Motion. Paragraphs 15 and 16 of the BPRT ruling demonstrate that the Reference was dismissed without affording the Appellant an opportunity to be heard, thereby violating principles of natural justice and fair hearing under **Article 50 of the Constitution of Kenya, 2010**.

14. On the prayer for stay and injunction, Mr. Nduati urged the Court to apply the overriding objective under **Section 1A and 1B of the Civil Procedure Act (Cap 21) and Article 159(2) of the Constitution** to do substantive justice. He submitted that the threshold for substantial loss has been met: the Appellant stands to lose goodwill and clientele built since 2019; there will be loss of livelihood and employment for staff; and the loss is not merely financial but goes to the root of the Appellant's business operations. The appeal will be rendered nugatory if the stay/injunction is not granted. Substantial issues

have been raised in the appeal, and the application was brought without delay.

15. Regarding security for due performance of the decree, the Appellant has already made payments totaling Kshs. 950,000/= and remains willing to abide by any further terms imposed by the Court.

16. On contempt, Mr. Nduati submitted that the Respondents are in willful contempt of the BPRT orders and the interim orders of this Court. Paragraph 33 of the BPRT ruling indicated that the issue of levying distress was before the Tribunal, while paragraph 36 found that the termination notice was not in conformity with the law. Despite this, the Respondents effected a lockout on 30th March 2026 and issued a further notice dated 8th April 2026 requiring vacation of the premises and double distress for rent. The Tribunal was seized of the matters referred to it, and the Respondents were not supposed to take any adverse action. The Appellant has demonstrated that all elements for citing the Respondents for contempt have been met.

17. The Court was urged to find the Respondents in contempt, grant the stay and injunctive orders sought, and issue any other appropriate relief.
18. The Respondents' case, as contained in the Replying Affidavit sworn on **7th April 2026, the Notice of Preliminary Objection dated 7th April 2026**, written submissions and oral highlights by **Learned Counsel Ms. Mbugua**, is that this Court lacks jurisdiction to hear the applications. The issues raised relate to the termination of a controlled tenancy and recovery of possession of business premises, which fall within the exclusive jurisdiction of the Business Premises Rent Tribunal pursuant to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301).
19. The tenancy was lawfully terminated by the Statutory Notice dated 27th January 2026 which lapsed on 27th March 2026 without any Reference being filed before the Tribunal. Upon lapse of the notice, the termination took effect by operation of law, and the lockout on 30th March 2026 was lawful.

20. The Appellant has failed to demonstrate substantial loss warranting a stay or injunction. There is no subsisting tenancy; any alleged loss can be compensated by damages. The Appellant has admitted being in rent arrears (including VAT which was never waived under the lease) and has failed to pay accrued arrears. The Appellant is thus not entitled to equitable relief. Granting a stay would greatly prejudice the Respondents. The appeal is not arguable but merely speculative, and the Appellant's case collapses on its own admissions.

21. On contempt, Ms. Mbugua submitted that the application is unjustified. The Tribunal, at paragraph 34 of its ruling, stated that it could not issue an eviction order. The issue of termination was never presented by the Appellant for determination.

22. The Landlord had issued a statutory termination notice dated 27th January 2026, which the Appellant did not challenge by way of a separate Reference despite knowledge of it.

23. On 30th March 2026, the Landlord lawfully exercised its right to take possession. No Court order was disobeyed,

as the existing orders did not restrain termination or possession. The Respondents' conduct was lawful and not in contempt. The elements of contempt have not been proved. The full BPRT ruling and orders were only served recently. There was no issue regarding the termination notice before the Tribunal. The Appellant is improperly inviting this Court to determine the validity of the termination notice, an issue not before this Court and over which this Court lacks jurisdiction in the present applications.

24. The Court was urged to dismiss both applications with costs

25. Having considered the applications, affidavits, written and oral submissions and the applicable law, the following issues arise for determination:

- i) Whether this Court has jurisdiction to entertain the applications**
- ii) Whether the Appellant has satisfied the conditions for the grant of an order of stay of execution and/or a temporary injunction**

pending the hearing and determination of the appeal.

iii) Whether the Respondents are in contempt of the orders of this Court.

26. The court shall now proceed to address the said issues sequentially.

27. The power of this court to hear appeals from the BPRT is conferred by Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301). While the Tribunal has exclusive jurisdiction over disputes relating to controlled tenancies, including termination and possession (Sections 4, 6 and 12 of Cap 301), this Court is properly seized of the appeal and the incidental applications for stay pending appeal and contempt of its own orders.

28. The Preliminary Objection, though raising important points on the statutory termination notice dated 27th January 2026, does not oust the jurisdiction of this Court over the pending appeal or the enforcement of its interim orders.

29. The power of this Court to grant a stay of execution pending appeal is derived from Order 42 Rule 6 of the Civil Procedure Rules, 2010. The rule provides that no order for stay shall be made unless the Court is satisfied that substantial loss may result to the applicant unless the order is made, the application has been made without unreasonable delay, and 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.
30. The principles were authoritatively articulated in **Butt v Rent Restriction Tribunal [1982] KLR 417** and applied in numerous decisions. Substantial loss is not limited to monetary loss but includes loss of goodwill, clientele, livelihood, and business disruption.
31. The principles for a temporary injunction are set out in the locus classicus **Giella v Cassman Brown & Co Ltd [1973] EA 358**. These principles are applied alongside the overriding objective under **Sections 1A and 1B of the Civil Procedure Act (Cap 21) and Article 159(2) of the Constitution of Kenya, 2010.**

32. The Appellant has raised arguable points in the appeal, particularly regarding procedural fairness before the BPRT (paragraphs 15 and 16 of the Tribunal ruling) and the conformity of the termination notice with the law (paragraph 36). The Appellant has operated the business since 2019 and stands to lose goodwill, clientele, and staff livelihoods losses that go beyond mere financial compensation and would render the appeal nugatory. The application was filed promptly. The Appellant has already paid substantial sum including the Kshs. 600,000/= ordered on 9th March 2026 and is willing to furnish further security.

33. The Respondents counter that there is no subsisting tenancy, any loss is compensable by damages, the Appellant is in admitted arrears (including VAT), and a stay would prejudice them.

34. The Court finds that the Appellant has established a prima facie case with a probability of success on the appeal, particularly on the issue of fair hearing before the BPRT. Substantial loss has been demonstrated, the application was brought without unreasonable delay, and

the Appellant has already furnished adequate security which payment was acknowledged and admitted by the Respondents. The balance of convenience favours the grant of stay and injunction to preserve the status quo pending appeal.

35. The overriding objective of justice demands this outcome to prevent an irreversible injustice.

36. On whether the Respondents are in contempt of the orders of the court previously issued, it is noteworthy that Contempt of Court in civil proceedings involves willful disobedience of a clear, unambiguous Court order of which the contemnor had knowledge.

37. The elements, as set out in **Samuel M.N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** and **Cecil Miller v Jackson Njeru & Another [2017] eKLR**, are: (i) existence of a clear and unambiguous order; (ii) knowledge of the order by the alleged contemnor; (iii) willful and deliberate failure to comply; and (iv) proof to the required standard. Contempt applications must be strictly proved, as held in **Mutitika v Baharini Farm Ltd [1985] KLR 227**.

38. The Appellant relies on the interim stay orders of 9th March 2026 and paragraphs 33 and 36 of the BPRT ruling as evidence of willful disobedience, together with the lockout on 30th March 2026 and the subsequent notice of 8th April 2026.

39. The Respondents contend that no specific order prohibited termination or possession; the statutory termination notice dated 27th January 2026 predated the proceedings and was not separately challenged; possession was taken on 30th March 2026 lawfully under the lease; and the existing orders did not restrain termination or possession. The issue of termination validity is not before this Court.

40. The Court finds that the Appellant has not proved the elements of contempt to the required standard. The interim orders of 9th March 2026 granted a conditional stay of execution of the BPRT ruling but did not contain a clear, unambiguous prohibitory order restraining the Respondents from exercising their statutory and contractual rights of termination or possession following the 27th January 2026 notice. The actions complained of

were not in direct violation of any specific directive in the orders. The Respondents' conduct, while adverse to the Appellant, was not willful disobedience of a Court order.

41. The contempt application therefore fails.

42. In light of the foregoing findings and having regard to the interim order of 14th April 2026 which preserved a modified status quo until today, the Court makes the following orders:

i) The current status quo as directed by this Court on 14th April 2026 shall be maintained pending the hearing and determination of the appeal. The Appellant shall remain in possession of Shop No. 3 on L.R. No. 136/7879 but shall not operate his business therein. Execution of the BPRT ruling delivered on 19th February 2026 and any further distress, eviction, auction or adverse action by the Respondents is stayed, and the Respondents are restrained from interfering with the Appellant's quiet possession of the said premises on the aforesaid terms.

- ii) The application citing the Respondents for contempt dated 31st March 2026 is dismissed.**
- iii) The costs of both applications shall be in the cause of the appeal**

Dated, Signed and Delivered Virtually this 30th day of April, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

Mr. Nduati for the Applicant.

N/A for the Respondents.

Court Assistant: Mary Ngoira.