

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC APPEAL NO E002 OF 2026**

**MATHEWS OPE**  
**T/A DIESEL TURBO CHARGING SERVICES .....**  
**APPELLANT**

**-VERSUS-**

**FINTEL LIMITED.....**  
**RESPONDENT**

**RULING**

**Introduction**

1. The appellant herein in Nairobi Tribunal case No E691 filed a notice of motion application dated 6<sup>th</sup> October 2025 in the Business Premises and Rent tribunal seeking for orders to set aside earlier orders of eviction as against him which notice of motion application was dismissed prompting the filing of this instant appeal filed together with an application dated 8<sup>th</sup> January 2026
2. The matter is coming up for determination of the said Notice of motion application dated 8<sup>th</sup> January 2026 and the notice of preliminary objection dated 21<sup>st</sup> January 2026. The notice of preliminary objection raised the following grounds
  - a) In terms of **section 15(1) of The Landlord and Tenants** (Shops, Hotels and catering Establishment Act, an appeal does not lie in this court expect from a determination or order of the business Premises Tribunal made in a reference

b) That this appeal is arising out of a determination on the notice of motion dated 6<sup>th</sup> October 2025 in BPRT Case No E691 of 2025

3. The notice of motion application sought the following orders

a) Spent

b) That this honourable court be pleased to issue an order of stay of execution of the ruling and order of Nairobi Tribunal case No E691 of 2025 pending hearing and determination of the appeal

c) That the honourable court be pleased to issue an order directed at the respondent either by himself, agents, employees and or servants to re-open the tenant premises forthwith

d) That the honourable court be pleased to issue an order that in the event the appellant is evicted in between the time of filing this application and directing the court that the landlord evicts the appellant, the Honorable court is called upon to issue an order of restitution restating the appellant back to the business premises

4. The respondent responded in a replying affidavit dated 11<sup>th</sup>

February 2026 where he raised the same issues as in the notice of preliminary objection

5. The court directed for the notice of preliminary objection and the notice of motion application to be canvassed jointly by way of written submissions and both parties complied with the

appellant/applicant drafting submissions dated 3<sup>rd</sup> March 2026 while the respondent drafted submissions dated 27<sup>th</sup> February 2026.

#### Respondents submissions

6. In support of their notice of preliminary objection the respondent submitted that what was before the court for appeal was arising from an interlocutory application and not a reference therefore contravening 15(1) of The Landlord and Tenants (Shops, Hotels and catering Establishment Act hence should not be entertained. On the notice of motion application dated 8<sup>th</sup> January 2026 seeking for stay of execution orders, the respondent submitted that the orders had been overtaken by events as it sought to have the appellant reinstated in the premises, which was not tenable as the premises had been occupied by a new tenant.

#### Appellant/Applicant's submissions

7. The applicants submitted that as per order 42 rule 6(2) of the civil procedure rules, the applicant was entitled to stay of execution pending hearing and determination of the appeal having satisfied the requirements of substantial loss, application made without delay and provision for security for due performance of a decree. Counsel submitted that substantial loss had been demonstrated being that the appellant was a business which had been locked out of the premises due to the orders occasioning loss as they were not able to carry out the business.

#### **Analysis and determination**

8. The notice of preliminary objection dated 21<sup>st</sup> January 2026 is founded on the notion that the suit is improperly before this court as it lacks jurisdiction to entertain the same. It goes without saying that without the requisite jurisdiction a court of law down its tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The objection, therefore, attains the threshold of a pure preliminary point of law. Notwithstanding that the objection on jurisdiction is a pure point of law, the objection is premised on the fact that the appeal lies on an interlocutory application and not a reference relying on section 15(1) of the The Landlord and Tenants (Shops, Hotels and catering Establishment Act. The said section reads as follows

*15(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the High Court:*

My interpretation of the above is that in a reference several decisions can be made and not constraining the determination to mean the final outcome of the reference alone. The section therefore gives the parties the liberty to challenge any decision that comes out of the reference in an appeal, It has not restricted the decision to the outcome of the main reference. Having said that the notice of motion application dated 6<sup>th</sup> October 2025 was filed in the main reference being BPRT 691 /2025 and the matter was dismissed. This was a determination emanating from the reference and the appellants herein have every right to appeal as against the

said ruling as it is a binding decision of the tribunal and as such the appellant is well within the definition as in section 15(1) of the Act this has been highlighted In the case of **Mike Muli -Vs- Justus Mwandikula Kilonzo & 4 others [ 2022] eKLR**, Oguttu Mboya J stated that the only persons who have a right of appeal to this court are parties to a Reference who have been aggrieved by a determination or order arising from the Reference and not otherwise. The preliminary objection this fails and the court is vested with the jurisdiction to entertain the same.

9. Moving on to the application dated 8<sup>th</sup> January 2026 for orders of stay of execution pending appeal, and upon consideration of the said Motion, the supporting affidavit and the submissions the only issue for determination is whether there should be a stay of execution on the ruling delivered on

4<sup>th</sup> September 2024

10. On the prayer for stay of execution, the same is overtaken by events. The assertion by the Respondent in its replying affidavit, that execution had already happened and the Appellant/Applicant evicted from the suit premises and new tenants have come in, has not been contradicted by the Applicant. Considering that what the Applicant seeks to prevent by an order of stay of execution has already happened, the court can only arrive at one conclusion; that the Applicant's application for stay of execution is moot. Granting the order of stay of execution will be a mere academic exercise.

The Court of Appeal in the case of **Okiya Omutatah Okiiti & 2 others -vs- A.G. & 4 others (2020) eKLR**, while citing with approval the case of Daniel Kaminja and 3 others (Suing as Westlands Environment Caretaker Group) vs County Government of Nairobi 2019 eKLR, stated that,

*A matter is moot if further legal proceedings with regard to it have no effect, or events have placed it beyond the reach of the law. Thereby, the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case and any ruling by the court would have no actual practical impact. No court of law will knowingly act in vain....a suit is academic where it is merely theoretical, makes empty sound and is of no practical utilitarian value to the plaintiff even if judgment is given in his favor."*

The court will not issue orders in vain. The prayer for stay of execution and all other consequential prayers are disallowed.

### **Final disposition**

1. The upshot of the above is that;
  - i. That the Notice of Preliminary Objection dated 21<sup>st</sup> January 2026 is not merited.
  - ii. The Notice of Motion application dated 8<sup>th</sup> January 2026 is hereby dismissed
  - iii. Each party to bear its own costs.

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this 7<sup>th</sup> day of **May 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Ruling delivered in the presence of: -**

**N/A**..... for Applicant

**Mr. Kangethe**..... for Respondent

**Philomena W.**..... Court Assistant