



Apa Insurance Limited v Burger Chef Limited (Environment and Land Appeal E081 of 2024) [2025] KEELC 5935 (KLR) (12 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E081 OF 2024**

**CG MBOGO, J
AUGUST 12, 2025**

BETWEEN

APA INSURANCE LIMITED APPELLANT

AND

BURGER CHEF LIMITED RESPONDENT

RULING

1. Before this court is the notice of motion dated 10th June, 2025 filed by the respondent/applicant, and it is expressed to be brought under Sections 1A,1B and 3A of the [Civil Procedure Act](#), and Order 51 of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. Pending the hearing and determination of this application inter partes, this honourable court be pleased to issue and interim order arresting the delivery of judgment scheduled for 14th August, 2025.
 3. The order scheduling the delivery of judgment in this appeal be and is hereby reviewed and varied, and in its place Nairobi ELCLA/E076/2024-Burger Chef Limited v APA Insurance Limited and Nairobi ELC Appeal No. E081 of 2024- APA Insurance Limited v Burger Chef Limited both arising from the judgment of the Business Premises Rent Tribunal delivered on 9th May, 2024 in BPRT Case No. E953 of 2022 be and are hereby consolidated for purposes of joint hearing and determination.
 4. This honourable court be pleased to grant any other or further orders it deems just and expedient in the circumstances.
 5. The costs of this application be in the cause.



2. The application is premised on the grounds inter alia that the respondent/applicant is in danger of being prejudiced by the impending judgment in this matter which is related to ELCA No. E076 of 2024.
3. The application is supported by the affidavit of Firozali Kassam sworn on even date. The respondent/applicant deposed that this matter and ELCA No. E076 of 2024 arise from the same judgment delivered by the Business Premises Rent Tribunal on 9th May, 2024. Further, that the two appeals are linked both factually and legally, and raise overlapping issues for determination.
4. The respondent/applicant deposed that unless judgment in this matter is stayed, there is a real likelihood of inconsistent outcomes, and irreversible prejudice to its rights. Further, that if judgment in this matter is delivered and the tribunal's decision is overturned in full, any determination in ELCA No. E076 of 2024 would be rendered redundant and inconsequential. That if this appeal is dismissed and the E076 of 2024 is allowed, there would be difficulties in enforcement.
5. The respondent/applicant deposed that consolidation of the two appeals will enable the court to address all related issues comprehensively based on a unified record. Further, that it is necessary and in the interest of justice that this appeal is stayed pending the consolidation and joint hearing with ELC appeal No. E076 of 2024. It was also deposed that no party will suffer prejudice from consolidation but that it will suffer irreparable harm should judgment proceed independently.
6. The application was opposed by the replying affidavit of Kennedy Ochieng, the learned counsel for the respondent/appellant sworn on 2nd July, 2025. The appellant/respondent deposed that in ELCA No. E076 of 2024, the respondent/applicant has never filed a record of appeal but had the time to make the instant application. That from the memoranda of appeal, it is clear that the issues for determination are totally different and independent of the other, and there cannot be possibly a contradiction in findings. The appellant/ respondent deposed that a determination of the effective date of increment of the rent in the appeal will not prejudice the determination on the issue of quantum of rent increment which is subject of ELCA No. E076 of 2024.
7. The appellant/respondent deposed that the common issue of quantum of costs awarded at KShs. 50,000/- by the Tribunal is so peripheral to the issue at hand and in any event it has been paid by the respondent/applicant. It was deposed that it is willing to abandon the same to avoid unreasonable delay, and that it will suffer prejudice if the application is allowed.
8. The application was canvassed by way of written submissions. The appellant/ respondent filed its written submissions dated 28th July, 2025. While relying on the contents of its replying affidavit, the appellant/ respondent submitted that the instant application is intended to scuttle the delivery of the judgment herein that is scheduled on 14th August, 2025. Further, that the respondent/applicant is not keen to have this matter determined at all because the submissions of the main appeal have never been filed. The appellant/respondent submitted that whereas it would have been desirable to have the two appeals determined together, the respondent/applicant has not provided valid reasons why it has failed to process the appeal in E076 of 2024. That this being a court of equity, the court should not aid the indolent by granting the discretionary relief sought. It was submitted that the determination of the effective date of increment of the rent in the instant appeal will not in any way affect or prejudice the determination on the quantum of such increment as sought in the ELCA No. E076 of 2024.
9. The respondent/applicant did not file its written submissions. Be that as it may, I have considered the application, and the replying affidavit as well as the written submissions filed by the appellant/ respondent. The issue for determination in my view, is whether this court ought to stay delivery of judgment in this matter and consolidate the same with ELCA No. E076 of 2024.



10. I have perused the documents relied on by the respondent/ applicant. It is not in dispute that the Business Premises Rent Tribunal delivered judgment on 9th May, 2024. Being dissatisfied with the said decision, both parties herein preferred separate appeals before this court i.e. Memorandum of Appeal dated 3rd June, 2024 and 10th June, 2024 respectively. While the appellant/respondent contends that ELCA No. E076 of 2024 filed by the respondent/applicant seems abandoned, no party sought to disclose the existence of the initial appeal filed by the respondent/applicant within reasonable time. One would also wonder why the appellant/respondent did not file a cross- appeal, if any. Having said that, it is critical to note that both parties risk exposing the court to ridicule owing to the potential result of conflicting decisions.
11. It is my view that while the grounds in the appeal may differ, they all stem from the same judgment. It would be logical and to save on precious judicial time that this court arrests the judgment scheduled for delivery on 14th August, 2025 to enable both appeals to be heard and determined once and for all.
12. The notice of motion dated 10th June, 2025 is hereby allowed in the following terms: -
 - i. The judgment slated for delivery on 14th August, 2025 is hereby arrested.
 - ii. Nairobi ELCLA/E076/2024-Burger Chef Limited v APA Insurance Limited and Nairobi ELC Appeal No. E081 of 2024- APA Insurance Limited v Burger Chef Limited both arising from the judgment of the Business Premises Rent Tribunal delivered on 9th May, 2024 in BPRT Case No. E953 of 2022 are hereby consolidated for purposes of joint hearing and determination.
 - iii. Mention for further directions. ELC LA E076/204 and ELCLA E 081/2024 to be mentioned on 13th October 2025 for further directions.
 - iv. Each party to bear its own costs.Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 12TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

12/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ochieng for the Appellant

Ms. Kimani holding brief for Mr. Ochieng for the Respondent

