



REPUBLIC OF KENYA



**County to County Choma Grill Limited v Joyce Wangui Wachira t/  
a Paddy Distributors (Environment and Land Appeal E059 of 2023)  
[2024] KEELC 887 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 887 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E059 OF 2023  
LN MBUGUA, J  
FEBRUARY 22, 2024**

**BETWEEN**

**COUNTY TO COUNTY CHOMA GRILL LIMITED ..... APPLICANT**

**AND**

**JOYCE WANGUI WACHIRA T/A PADDY DISTRIBUTORS ..... RESPONDENT**

*(Being an appeal from the ruling of the Business Premises Rent Tribunal at Nairobi delivered on 10th November 2023 by Honourable Cyprian Mugambi in BPRT Case No. E028 of 2022)*

**RULING**

1. Before me is the notice of motion application dated 8.12.2023 which was filed contemporaneously with the memorandum of appeal against the ruling dated 10.11.2023 in BPRT case No. E028 of 2022. The applicants/ appellants were the tenants, while the respondent was the Land Lord before the tribunal.
2. The applicants are seeking a stay of execution of the aforementioned ruling pending the hearing and determination of this appeal, an injunction against the respondent restraining the latter from evicting them from the suit premises and an order that the OCS parklands police station be directed to ensure compliance with the said orders.
3. The application is supported by the grounds set out in the application as well as the supporting affidavit of one Samson Njoroge Karoki, the director of the applicants. He contends that they entered into a tenancy agreement with the respondent in which the latter leased out the suit premises on land reference no. 209/76/2 to them. The applicants were operating a bar and restaurant in the suit premises.
4. That a dispute arose thereafter as the respondent would send customers for restaurant services which were to be offset by rent. That the respondent purportedly issued a Notice of Termination of the



tenancy dated 28.9.2022, but subsequently, the parties agreed to settle the dispute, whereby the applicants were to pay Ksh. 1, 000 000 and the respondent was to issue a new lease. To this end, a new tenancy agreement was made dated 23.5.2023.

5. That the respondent reneged on the new agreement prompting the applicants to approach the tribunal in BPRT case No. E028 of 2023 vide an application dated 9.6.2023. That the applicants were seeking injunctive orders to prevent the respondent from evicting them. They were also seeking leave to file a reference out of time. One of their grounds of filing the application before the tribunal was that they were never served with a termination notice.
6. That in the ruling of the tribunal, their application was dismissed, hence the current application and the appeal.
7. The applicants contend that if the aforementioned ruling is executed, they stand to lose Ksh. 5,447 596 in rent deposits and costs of renovating the premises.
8. In their submissions dated 17.1.2024, the applicants have reiterated the averments set out in their application, adding that the appeal shall be rendered nugatory unless the orders are granted. They also submit to having met the criteria for the issuance of the restraining orders.
9. The application was served but no responses were filed.
10. The issues falling for determination are whether the stay and injunctive orders sought by the applicants are merited.
11. Should the court proceed to allow the application seeing that the same is unopposed?. In the Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, the court had this to say in relation to an unopposed application;

“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.
12. Guided by the above case law, I find that this court has a duty to look into the merits of the current application, even if the same is unopposed.
13. I have keenly perused the ruling dated 10.11.2023 before the tribunal. The narrative given by the applicants before this court and before the tribunal is rather unflattering. To start with, in their current affidavit before this court, the applicants contend that they approached the tribunal in the case E028 of 2023 vide the application dated 9.6.2023 after the respondent reneged on their new agreement dated 23.5.2023. However, the ruling in question indicates that the respondent had already filed the application dated 27.4.2023 for eviction of the applicant, that was two months before the applicants filed their own application dated 9.6.2023.
14. At paragraph 25 and 26 of the said ruling, it emerges that the applicant had filed another application for injunction in BPRT Case no. 1012 of 2022 which application was apparently dismissed on 6.4.2023. Despite the dismissal of the said application, the suit is still pending before the tribunal. Nevertheless, the respondent was still given a go ahead to enforce the termination notice dated 28.9.2023 in view of the fact that the case no. E1012 of 2022 was filed as a complaint under section 12 (4) of *cap 301* and not a reference.



15. Another issue I discern from the said ruling is that contrary to the averments of the applicants that they had not been served with the notice of termination, they had indeed admitted to service as captured in paragraph 27 of the ruling in question.
16. This far, it is clear that the applicants have been less than candid before this court and are guilty of material non disclosure. *In re Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR, the court had this to say, albeit in a succession case;

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”
17. The instant application is fraught with all manner of difficulties seeing that there exists previous litigation in the dispute, and that applicants sole complaint appear to be lack of service, yet they admit service!. What more, the applicants did not proffer any tangible explanation as to why they did not file a reference on time before the tribunal. They have still not given any explanation before this court in regard to that issue.
18. The import of the ruling of 10.11.2023 is that the applicants have no substantive suit in case No. E028 of 2023 as their quest to file a reference was unsuccessful.
19. In *Ezekiel Mule Musembi v H. Young & Company (E.A) Limited* [2019] eKLR, the case of *Re Global Tours & Travel Ltd* HCWC No. 43 of 2000 was cited where Ringera, J (as he then was) held that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.”
20. As noted in the ruling before the tribunal, the tenancy relationship between the parties stood as terminated as the relevant notice was served but no reference was filed. In such circumstances, any order of stay would in essence mean sustaining the tenancy relationship where non exists.
21. The upshot of this ruling is that an order of stay of the tribunal ruling dated 10.11.2023 is not merited. An injunction cannot be issued in a vacuum hence the restraining orders must fall by the wayside.
22. In the end, the application dated 8.12.2023 is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/s Wangui for Applicant



M/s Makumbi holding brief for Wachira for Respondent

Court Assistant: Eddel

