



**Mbugua & 3 others v Turi Gardens Limited (Civil Application E538 of 2024) [2025] KECA 755 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 755 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E538 OF 2024  
M NGUGI, F TUIYOT'T & GV ODUNGA, JJA  
MAY 9, 2025**

**BETWEEN**

**ELIZABETH NYAWIRA MBUGUA .....1ST APPLICANT SOPHIA  
WANJIRU MBUGUA ..... 1<sup>ST</sup> APPLICANT  
SOPHIA WANJIRU MBUGUA ..... 2<sup>ND</sup> APPLICANT  
JOHNSON KAGUA MBUGUA ..... 3<sup>RD</sup> APPLICANT  
IAN WAHOME MBUGUA T/A MOWAKA AUTO CENTRE ..... 4<sup>TH</sup> APPLICANT  
  
**AND**  
  
**TURI GARDENS LIMITED ..... RESPONDENT****

*(Being an application for an injunction pending lodging, hearing, and determination of an intended appeal from the ruling and order of the Environment and Land Court at Milimani (Oguttu-Mboya, J.) dated 14th October 2024 in ELC Case No. E363 of 2024)*

**RULING**

1. In the application dated 18<sup>th</sup> October, 2024, the applicants seek various restraining orders against the respondent in relation to the property known as L.R. No. 1/1396 {Original Number 1/1395/1} pending lodging hearing and determination of their intended appeal against the ruling of Ogutu-Mboya J. delivered on 14<sup>th</sup> October 2024, to wit, that the respondent be restrained from: breaching its covenant under the lease for five years and three months dated 1<sup>st</sup> January 2021 in respect of the suit property; entering the suit premises except when exercising its right of access under clause 4.9 .1 of the least dated 1<sup>st</sup> January 2021 until further orders of the court; evicting the applicants from the suit property; interfering with the running of their businesses, namely a car wash, mini barbershop sale of motor vehicles and café and offices on the suit premises.



2. The application is brought under rule 5(2)(b) of this Court's Rules and section 3 of the *Appellate Jurisdiction Act*. It is based on the grounds on its face and on the affidavit in support sworn on 18<sup>th</sup> October 2024 by the 1<sup>st</sup> applicant, Elizabeth Nyawira Mbugua, and her further affidavit sworn on 28<sup>th</sup> October 2024.
3. Briefly, the facts of the matter as they appear from the applicants' affidavit in support of the application are that the applicants have a lease agreement with the respondent for a term of five years and 3 months commencing on 1<sup>st</sup> January 2021, which still has a term of 18 months to run. They run a carwash, yard for sale of motor vehicles, a restaurant and barber shop on the said premises. On 26<sup>th</sup> July 2024, the respondent issued notice of termination of the applicant's lease with effect from 24<sup>th</sup> September 2024. The applicants then filed a suit before the trial court and an application dated 2<sup>nd</sup> September 2024 seeking, inter alia, orders restraining the respondent from interfering with their enjoyment of the leased premises pending the hearing and determination of the suit.
4. In its ruling dated 14<sup>th</sup> October 2024, the trial court dismissed the applicant's application for an injunction, despite holding that they had a prima facie case with a probability of success. It directed the respondent to deposit the sum of Kenya shillings 2.5 million in an escrow account in the names of the advocates for the respective parties within 30 days of the ruling. It further directed that the deposit would be utilised by the applicants on account of relocation expenses and would be made available to them at their instance. Finally, the court directed the respondent to execute an undertaking as to damages that may arise or flow from the breach of its contract with the applicants. It is this ruling that has aggrieved the applicants, leading to the present application.
5. The applicants state that in its ruling, the superior court held that a landlord can terminate a lease in breach of his covenant, evict the tenant and destroy his business if he has the power to pay compensation, contrary to the decision of this Court in *Madhupaper International Limited v Kerr* (1985) KLR 840. They aver that this was held notwithstanding the fact that they have fully complied with their obligations under the lease, including payment of rent, and that the lease does not provide for termination before its expiration. They argue that the superior court's ruling undermines their right to peaceful enjoyment of the property, which is a fundamental characteristic of a lease.
6. The applicants further aver that they are members of a family who derive their livelihood from the suit property; and that the respondent has been allowed to deprive them of their livelihood, which it will do unless restrained by this Court.
7. The respondent opposed the application by a replying affidavit sworn by Dr. Samuel Thenya Maina on 31<sup>st</sup> October 2024. Dr. Thenya avers that the respondent has complied with the orders of the trial court and awaits directions on the hearing of the suit. Further, that the respondent has sold the suit property in order to repay another loan due from another of his companies to Kenya Commercial Bank; that having sold the suit property, which the 1<sup>st</sup> applicant was aware of, the respondent would not be able to comply with any orders issued by this Court. The Respondent has annexed to the affidavit of Dr. Thenya an agreement for sale dated 10<sup>th</sup> July 2024 between the respondent and Shazir Prime Realtors Limited. There is no indication that the sale is complete.
8. The applicants filed submissions dated 28<sup>th</sup> October 2024.  
  
They argue that their valid lease, expiring in March 2026, grants them exclusive possession of the premises where they run multiple businesses. The respondent, however, treats the lease as a revocable license, threatening their livelihoods. The applicants contend that the court misapplied lease laws, allowing landlords to evict tenants arbitrarily if they can pay damages. They assert that this violates constitutional protections and undermines tenant rights. They argue that their appeal is arguable and



will be rendered nugatory if an injunction is not granted, and they urge the Court to intervene. They submit that they have shown that they have an arguable appeal and that their right of appeal will be rendered nugatory if the orders sought are not granted.

9. The respondent filed submissions dated 15<sup>th</sup> November 2024.

It submits that the applicants have not met the threshold under rule 5(2)(b), particularly the requirement of an arguable appeal and the risk of the appeal being rendered nugatory. It further submits that the applicants have not demonstrated that they have an arguable appeal, or that the appeal will be rendered nugatory.

10. The respondent further states in its submissions that the applicants applied and obtained orders of injunction from the Business Premises Rent Tribunal, thus rendering the appeal in this Court useless, a fact that the applicants have failed to disclose to this Court. Additionally, the respondent argues that there is no risk of the appeal being rendered nugatory if the injunction is denied, asserting that any potential harm to the applicants is compensable through damages, making an injunction unnecessary.

11. When the matter came up for hearing on 18<sup>th</sup> February 2025, Dr. Gibson Kamau Kuria (SC) appeared for the applicants. He relied on the applicants' written submissions dated 18<sup>th</sup> November 2024. There was no appearance for the respondent.

12. We have considered the application and the affidavits in support and opposition thereto. We have also considered the written submissions of the parties. The law governing an application under rule 5(2) (b) of this Court's Rules is settled. To succeed in such an application, a party must satisfy the Court, first, that it has an arguable appeal; and, secondly, that its appeal will be rendered nugatory if the orders sought are not granted.

13. On the first principle, the applicants argue that they wish to urge on appeal, inter alia, that in its decision, the trial court allowed the respondent to breach clause 5.3 of the lease through which it had granted the applicants the right to enjoy the premises for 5 years and 3 months. The applicants' contention is that the trial court destroyed the essence of a lease, which is that it grants to the lessee the exclusive possession of the demised premises, with the right to exclude the landlord from the property during the term of the lease. We are satisfied that on this ground, the applicant's appeal against the decision of the trial court allowing the respondent to enter into the suit premises prior to the expiry of the lease, subject to its depositing the sum of Kshs. 2.5m in an interest earning account, is an issue that merits consideration on appeal.

14. The applicants are also required to satisfy the Court that their appeal will be rendered nugatory should the orders sought not be granted. Whether or not an appeal will be rendered nugatory will depend on the facts and circumstances of each case. Further, as was held in *Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others* [2013] KECA 378 (KLR):

“Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”

15. In this case, the applicants have averred that they have a 5 years and 3 months lease with the respondent, which had 18 months to run at the time of their application. They aver that they have established businesses on the suit premises from which they earn a livelihood. Should the orders sought not be granted and the appeal succeeds, we are not satisfied that the respondent will be in a position to compensate them in damages. We say this having noted the respondent's averments, through Dr.



Thenya, that it has its own financial troubles and has been forced to sell the suit property to meet its financial obligations.

16. We further note the respondent's statements in its submissions that the applicants have, during the pendency of this application, obtained injunctive orders from the Business Premises Rent Tribunal restraining the respondent from evicting them from the suit premises. We will not engage with the propriety or otherwise of the applicants' conduct in seeking relief from multiple forums on the same issue.
17. That notwithstanding, we are satisfied that the orders sought by the applicants are merited, at least for the balance of 18 months of the applicants' lease term with the respondent.
18. We accordingly grant injunctive orders restraining the respondent from evicting the applicants from the suit premises pending expiry of the applicants' lease with the respondent, or the hearing and determination of their intended appeal, whichever is earlier.
19. The costs of the application shall abide the outcome of the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**

**F. V. ODUNGA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

