



**Kamau v Nyaga (Environment and Land Appeal E052 of 2023)
[2024] KEELC 3756 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3756 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E052 OF 2023**

**LN MBUGUA, J
APRIL 18, 2024**

BETWEEN

JOSEPH NDIRITHI KAMAU APPELLANT

AND

JOAN W NYAGA RESPONDENT

RULING

1. The Appellant's Notice of Motion application dated 15.12.2023 is for determination. He seeks a stay of execution of the ruling delivered on 3.11.2023 in BPRT/623/2019 pending hearing and determination of the intended appeal and orders that costs be in the cause.
2. The application is premised on grounds on its face and on the Appellant's supporting affidavit sworn on 15.12. 2023. He avers that he filed an application dated 14.7.2023 at the Business Premises Rent Tribunal seeking orders that the Tribunal reviews its orders of 16.6.2023, which application was dismissed *vide* the ruling delivered on 3.11.2023 whose consequence was that the applicant's reference was dismissed.
3. The application is opposed by the Respondent vide her replying affidavit sworn on 12.2.2024. She avers that a stay is unwarranted in the matter as the Appellant moved out of the suit premises upon the Tribunal's ruling dated 3.11.2023 and for reasons that the application does not meet the threshold for grant of a stay as stipulated under Order 42 rule 6 (2) of the *Civil Procedure Rules*. Adding that the applicant has not provided security for costs, nor paid ksh.6,760,000/= which is the rent due and owing as per the Tribunal's ruling dated 16.6.2023.
4. She argues that having opted to apply for review of the Tribunal's ruling dated 16.6.2023, the Appellant cannot seek an appeal.
5. Despite this court's directions of 6.2.2024 that parties in the matter file their written submissions by 1.3.2024, none of them complied.



6. The court has considered the arguments raised herein by the rival parties. I find that *vide* the Business Rent Tribunal's orders of 16.6.2023, the Appellant was ordered to vacate the suit premises within 30 days and further ordered to pay rent arrears from July 2019 at ksh.130,000/= per month. The applicant sought a review of the said orders *vide* an application dated 14.7.2023, which application was dismissed. Hon Cyprian Mugambi stated in his ruling of 3.11.2023 as follows; "I do not find any merits in the tenant's application dated 14.7.2023 and the same is hereby dismissed with costs to the land lady."
7. I find that there is nothing that can be stayed in the order of 3.11.2023 which was a negative order dismissing the Appellant's application. To this end, I am persuaded by the finding in *Kausbik Panchamatia & Others v Prime Bank Limited & another* [2020] eKLR where the court stated that;

"...a negative order is incapable of being stayed because there is nothing to stay...".
8. In the circumstances, the application dated 15.12.2023 is found to be unmerited, the same is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Miiri holding brief for Odero for Appellant

M/s Banyo for Respondent

Court assistant: Eddel

