



**Kamau v John Chege & Partners (Environment and Land Appeal 2 of 2023) [2024] KEELC 4255 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4255 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL 2 OF 2023**

**JA MOGENI, J**

**MAY 16, 2024**

**BETWEEN**

**DANIEL KAMAU ..... APPELLANT**

**AND**

**JOHN CHEGE & PARTNERS ..... RESPONDENT**

**RULING**

1. The applicant filed this application before the High Court by Notice of Motion dated 10/07/2023 seeking to appeal out of time against a decision of the Business Premises Rent Tribunal delivered on 13/06/2023. The file was transferred to the Environment and Land Court upon the Order of Justice Janet Mulwa on 12/07/2023 where it was given a new ELC number on 25/07/2023 following the directions issued. The application carries the following prayers:
  - i. Spent
  - ii. That the Honorable Court be pleased to allow the Appellant to file the Appeal out of time in case the 14 days have elapsed after the Ruling was delivered on 13/06/2023 pending the hearing and determination of the Application inter partes
  - iii. That pending the hearing and determination of the appeal filed herein, an order do issue restraining the Respondent and/or its Agent from in any manner conceivable interfering with the Appellant's/Applicant's quiet use. Levying distress, increasing monthly rent and enjoyment of the suit premises located along River Road, Nairobi pending the haring and determination of this application.
  - iv. That pending the hearing and determination of the appeal filed herein, an order do issue restraining the Respondent and/or its Agent from in any manner conceivable interfering with the Appellant's/Applicant's quiet use, levying distress, increasing



monthly rent and enjoyment of the suit premises located along River Road, Nairobi pending the hearing and determination of this appeal.

- v. That the Nairobi City County Commandant and in particular the Police Officer in-charge of Kamukunji Police Station do ensure that orders made herein are respected and/or adhered to.
- vi. That the costs of this application be provided for

2. The application is founded on the following grounds:

- a. The Appellant is a protected tenant within the provisions of Cap 301 of the laws of Kenya in that:
  - i. The Appellant is a tenant within the suit premises by reason of an oral agreement entered between the parties
  - ii. The Respondent who has arbitrarily increased the monthly rent from Ksh. 2,500 to Ksh 15,000 which is more than 100% has pleaded in the Tribunal specifically that the tenancy in issue was altered after they served the Appellant with a legal alteration notice
  - iii. The Appellant was misled by his lawyer who failed to oppose the alteration notice by filing Reference under Section 6 before it took effect on 1<sup>st</sup> February 2022 and the Honorable court failed to grant leave to the Appellant of 14 days to oppose the alteration notice out of time before delivering its ruling.
  - iv. Thus the Appellant enjoy a controlled tenancy within Cap 301
- b. The Business Premises Rent Tribunal on 3<sup>rd</sup> February 2022 issued the Appellant with restraining orders which have enabled the Appellant to remain in situ without disturbance from the Respondent.
- c. The Appellant pays Ksh 2,500 as monthly rent
- d. The Appellant has no accumulated rent arrears having paid rent upto date
- e. The Appellant has heavily invested in his business within the suit premises and that all he shall suffer substantial loss if the orders sought are not allowed
- f. The Tribunal delivered its ruling on 13<sup>th</sup> June 2023 and dismissed the Appellant's application for restraining orders hence the Appellant is exposed to arbitrary rent increment, auction and eviction as threatened
- g. The Appellant orally sought a temporary stay pending the filing of formal application for stay but the Tribunal declined when it became evident that it will not favour or entertain such an application if ever filed hence this application
- h. The intended appeal has high chances of success and, the same shall be rendered nugatory if the orders sought are not granted. Besides the Appellant stands to suffer substantial loss.

3. Daniel Kamau the appellant, swore a supporting affidavit on 10/07/2023, deponing that the applicant has been a tenant from 1987 paying a monthly rent of Kesh 2,500 and he did not have any rent arrears. That he had two shops but due to the arbitrary increase of rent he took up only one shop but this notwithstanding he continued to pay rent for two shops .



4. That the appellant's lawyers failed to file a reference after being served with the alteration notice as provided under Section 6 of Cap 301 and that the landlord increased rent by 100% from Ksh 2500 to 15,000 and the Learned Vice-Chairperson not having directed the Valuers to carry out valuation of the rent payable backdated the rent increase from 1/02/2022 hence the respondent is demanding for non-existent rent arrears of Ksh 232,000.
5. That having established goodwill since 1987 the Appellant will suffer irreparable loss and damage if rent is increased arbitrarily. That despite the appellant having filed an application for restraining orders pending the hearing of the reference, it was dismissed vide the Tribunal's Ruling on 13/06/2023 hence this appeal and application for stay.
6. That the Respondent is demanding for non-existent rent backdated to 1<sup>st</sup> February 2022 as evidenced by the annexed copy of invoice marked as DK4 and being a person living with disability as evidence by a copy of the letter marked as DK5 the shop is the only source of the livelihood for the appellant and he is only trying to make ends meet.
7. The applicant's gravamen is that the respondent increased rent from Ksh 2,500 to Ksh 15,000 which is exponential and that he had paid all the rent owed and he had no outstanding amounts owed to the respondent as at the time of filing the instant application.
8. In its Ruling of 13/06/2023 the Tribunal dismissed the applicant's application for restraining orders since the applicant had not been granted leave to oppose the alteration which has expired after the appellant/applicant's lawyer failed to oppose the notice out of filing the reference under Section 6 before it took effect on 1<sup>st</sup> February 2022. At the same time the court failed to grant leave to the appellant of 14 days to oppose the said alteration notice out of time.
9. The deponent pleads circumstances that have delayed his efforts to lodge an appeal up to now; and he avers that the applicant has now received a demand letter for a sum in excess of Kshs.232,000/=, as arrears of rent since the notice of alteration of rent was first issued.
10. The applicant apprehends that if the orders sought are not granted, the respondent may proceed to levy distress on the applicant's property, and this would ground the applicant's effort to fend for himself being a person living with disability and also undermine the applicant's priceless goodwill.
11. Stephen Njonge Kiruri, the respondent, swore a replying affidavit on 9/11/2023 stating that the prayers sought by the appellant are in the nature of an injunction and or stay in disguise but the same cannot be granted since the conditions for grant of stay or injunction have not been met.
12. He has further averred that the appellant has not denied having failed to oppose by filing a reference the notice of alteration of rent in his affidavit dated 10/07/2023 and so the new rent took effect. That therefore the appellant as at November 2023 owed Kesh 335,000 to the Landlord. Thus the appeal lacks merit and should be dismissed.
13. The appellant/applicant filed a further affidavit sworn on 4/12/2023 and averred that the replying affidavit is brought in bad faith and he opposed each and every clause. That the Tribunal declined to grant the appellant time to oppose the alteration notice despite having sought the do so out of time after realizing the mistake made by his advocate. Who instead of filing a reference under section 6 filed and instead filed a complaint under section 12 on 31/01/2022.
14. The appellant denied having any rent arrears and also stated that the increment is tantamount to an eviction given that the space he occupies is small and that there was no Valuation carried out by a licensed surveyor and the increment was over 100% and this violates the provisions of Cap 301.



15. That the landlord has perennially increased rent since the appellant took the rent premises in 1987 with the intention of evicting him resulting in him surrendering one shop. He asks the court to dismiss the replying affidavit.
16. Parties agreed to canvass the application by way of written submissions and were directed to file their submissions during the court appearance on 21/11/2023. At the time of writing this ruling only the appellant had filed his submissions dated 4/12/2023.
17. I have considered the pleadings, affidavits and the appellant's submissions and the issue that presents itself for resolution is whether the application by the appellant is merited.
18. At this juncture I will state that the applications dated 10/07/2023 sought for extension of time to file appeal out of time and also sought for injunctive orders and stay orders under Order 40 rule 2 and Order 42 rule 6 respectively. The respondents picked this out and averred that the application seeking extension of time to file an appeal out of time is a back door attempt by the appellant to seek injunctive and stay orders which he is not deserving since the conditions and elements of the two applications have not been met. To put issues in perspective the court will seek to focus on the prayers made by the appellant for seeking to file an appeal out of time and also injuncting the respondent from evicting the appellant from the suit premises.

### **Analysis and determination**

19. Having summarized the respective parties' rival positions,' I find the issues for determination to be: whether the applicant is entitled to injunctive orders pending the hearing and determination of the intended appeal, whether the applicant/appellant is entitled to orders of extension of time within which to lodge his appeal and finally what conditions should the court attach to such leave and stay if granted.
20. Section 79G of the [Civil Procedure Act](#) provides that appeals originating from the subordinate court should be filed within thirty (30) days from the date of the decree or order appealed against. Section 95 of the said [Act](#) gives the court discretion to extend the time as it deems fit even if the time originally fixed has expired.
21. Section 79G of the [Civil Procedure Act](#) provides as follows;  

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:  
  
Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
22. Section 95 of the [Civil Procedure Act](#) provides thus: -  

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”is



23. The principles to be considered in exercising the court's discretion on whether or not to enlarge time to file appeal were set out in the case of *Leo Sila Mutiso v Rose Hellen Wangeri Mwangi* Civil Appeal 255/ 1997, the court, in considering the exercise of discretion to extend time, held as follows: -
- “It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of the delay. Secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”
24. These principles were also reiterated in *First American Bank of Kenya Ltd v Gulab P. Shah & Others* HCC 2255/2000 [2002] EA 65 as follows: -
1. The explanation if any, for the delay;
  2. The merits of the contemplated action, whether the appeal is arguable;
  3. Whether or not the respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favour of the applicant.
25. I will therefore proceed to address each of the limbs outlined in the above mentioned cases and establish whether the Applicant has satisfactorily met each of the said principles. The length of the delay and the explanation if any. The present Application is dated 10/07/2023, after the trial court delivered its ruling on the Notice of Motion Application on the 13/06/2023. The Applicant has also given an explanation of the 27 days delay since the delivery of the Ruling on the 13/06/2023.
26. The Applicant contends that the delay was caused by the decline of the Tribunal allowing the orally sought temporary stay pending the filing of formal application for stay which led to the filing of this application. At the same time the applicant blames his lawyer for failure to oppose the alteration notice by filing a reference under Section 6 before it took effect on 1<sup>st</sup> February 2022 and the Honorable Court failed to grant leave to the application of 14 days to oppose the alteration notice out of time before delivering its ruling.
27. Even though there is no maximum or minimum period of delay set by the law, anyone seeking this relief must satisfactorily explain the cause of the delay. See [\*Andrew Kiplagat Chemaringo V Paul Kipkorir Kibet\* \[2018\] eKLR](#).
28. From the delivery of the ruling to the filing of the instant Application is about 27 days delay. This in my view does not amount to inordinate delay further, the explanation given by the Applicant is sufficient and I therefore find that the Application was filed without undue delay.
29. The court in the case of [\*Fabim Yasin Twaba v Timamy Issa Abdalla & 2 Others\* \[2015\] eKLR](#), stated that extension of time is not a right of a party. It is an equitable remedy.
30. In my view the delay of almost 1 month is really not inordinate. I will thus give the applicant an opportunity to ventilate his case before the superior court. However, I decline to grant any injunctive or stay of execution orders at this stage. After all, the prayer for stay is only manifested in the applicant's affidavit but not in the body of the application. Further since the applicant was granted restraining orders by the Tribunal on 3/02/2022 as stated in the Application this has enabled the appellant to remain in situ without disturbance and this is good enough. In essence therefore prayers (iii) and (iv) were already granted and I may only buttress with the police protection



31. In the final analysis, this court disposes the application as follows:

- a. The applicant is granted prayer (ii) for leave to file an appeal within 14 days from the date of delivery of this ruling.
- b. Prayer (v) is also granted
- c. The costs of this application shall be in the Appeal

32. Mention shall be on 18/06/2024 to confirm filing of the Appeal and service upon the respondent.

It is so ordered

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MAY 2024.**

**MOGENI J**

**JUDGE**

In the virtual presence of:

Daniel Kamau Appellant in person

No appearance for Respondent

Ms. Caroline Sagina: Court Assistant

**MOGENI J**

**JUDGE**

