



Shah t/a Jaykay Enterprises Limited v Kuria t/a Mishku Communication Company Limited & Another (Environment and Land Judicial Review Case 11 of 2023) [2024] KEELC 6054 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 11 OF 2023
A OMBWAYO, J
SEPTEMBER 20, 2024**

BETWEEN

NITIN SHAH T/A JAYKAY ENTERPRISES LIMITED APPLICANT

AND

ISAAC KURIA T/A MISHKU COMMUNICATION COMPANY LIMITED & ANOTHER RESPONDENT

RULING

1. The ex parte applicant filed the application dated 24th April 2024 seeking orders that the instant application be certified as urgent and heard on a priority basis and that pending the hearing and determination of this application inter-partes, the Honorable Court be pleased to grant stay of execution of the Decree issued to the Interested Party in Nakuru Misc. Application [No. E004 OF 2024](#) emanating from the Tribunal proceedings, the subject matter of the Judicial Review Application herein.
2. Pending the hearing and final determination of the Judicial Review Application herein, this Honorable Court be pleased to order stay of enforcement and/or execution of the Order requiring the Ex-Parte Applicant to pay the Interested Party the sum of Kshs.1,972,918.34.
3. The application is based on grounds that the Ex-Parte Applicant is the absolute owner of all that property known as Nakuru/Municipality Block 9/16 situated within Nakuru in respect of which the Interested Party was a Tenant in respect of a portion thereof until the 30th November, 2023.
4. By the judgment delivered by the Vice Chairman, Business Premises Tribunal in Nakuru Bprt Number 48 OF 2021 (Consolidated with Nakuru BPRT 57 of 2021) on 10th November, 2023, the Ex-Parte Applicant was ordered to pay the Interested Party the sum of Kshs. 1,972,918/34.



5. The Ex-Parte Applicant has by the Judicial Review application herein sought the quashing of the order declaring that the Interested Party is entitled to compensation for improvements of the suit premises in the value of Kshs.14,416,750/= and that the same should be set off against the arrears of rent of Kshs.12,443831.66
6. The Judicial Review proceedings are pending. In granting the Ex-Parte Applicant leave to file the Judicial Review Application herein, the Honorable Court declined to issue an order for a stay of execution, thus left the Ex-Parte Applicant exposed to execution proceedings. The Interested Party has now extracted the Decree and commenced execution proceedings against the Applicant.
7. Warrants of attachment and sale were on the 23rd April, 2024 served upon the Applicant by Crater View Auctioneers and its property is in danger of being seized at the expiry of seven (7) days. The Applicant stands to suffer serious injustice if the Interested Party levies execution against it.
8. The Applicant is ready to abide by any conditions for stay set by this Honorable court. Unless the orders sought herein are granted the Applicant's Judicial Review application shall be rendered nugatory.
9. The application ought to be granted on the interests of Equity and justice. The supporting affidavit reiterates the grounds. The Interested party filed grounds whose gist is that the applications is res-judicata and that the court is functus officio
10. I have considered the application, the grounds of opposition and submissions on record and do find that the application for stay of execution was considered by the court that granted leave and declined to grant the prayer. Having declined to grant the prayer for stay of execution the court is said to be functus officio. I do not agree with this argument since the order was not made on merit.
11. The application for leave for judicial review is commenced by way of chamber summons and an order of stay ought to be obtained at the leave stage. However the same can be deferred for inter parte hearing. If an order for stay of execution is declined at the stay stage then an aggrieved party ought not to appeal but not to file a fresh application for stay. Secondly the application for stay of execution is not res-judicata having not been determined by this court on merit at the leave stage. I do find the application with merit and is allowed. I do order a stay of enforcement and/or execution of the Order requiring the Ex-Parte Applicant to pay the Interested Party the sum of Kshs.1, 972,918.34. The applicant to deposit the decretal amount in a joint account opened by the advocates for parties herein within the next 20 days. Costs in the cause.
12. I do give directions that the respondent to file and serve a reply to the notice of motion within 7 day, the applicant to file and serve a supplementary affidavit with submissions within 10 days of service. The respondent to file submissions within 10 days of service. Judgment on 13th November, 2024

RULING DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 20TH DAY OF SEPTEMBER, 2024.

A .O. OMBWAYO

JUDGE

