



REPUBLIC OF KENYA



Olenyo & another v Raphael Muendo Kathukya t/a Keystone Services & 4 others (Environment and Land Appeal E092 of 2024) [2024] KEELC 13449 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E092 OF 2024**

JG KEMEI, J

NOVEMBER 22, 2024

BETWEEN

JECTONE OCHIENG OLENYO 1ST APPELLANT

JOSHUA MWANGI NJOROGE 2ND APPELLANT

AND

RAPHAEL MUENDO KATHUKYA T/A KEYSTONE SERVICES AGENT

AND

ISAAC MUSILA MUTISO T/A SILVERLINE AUCTIONEERS AUCTIONEER

AND

LOISE MWIA MUSILI 1ST LANDLORD

JOSHUA KANYOLE MUSILI 2ND LANDLORD

JOSEPH MALOMBE MUSILI 3RD LANDLORD

RULING

1. The Notice of Motion dated the 26/8/24 was filed by the Applicants seeking the following Orders;
 - a. Spent
 - b. Spent
 - c. The Court be pleased to grant orders of status quo
 - d. Spent
 - e. That the Honourable Court be pleased to order temporary stay of execution of the orders issued and all consequential orders pending the hearing and determination of this appeal



f. Costs of the Application

2. The Application is premised on the grounds annexed thereto and the Supporting Affidavit of Jectone Ochieng Olenyo sworn on the 26/8/24 where he deponed that the Applicants filed a case at the Business Premises and Rent Tribunal in Case No 1085 of 2019 and obtained interim orders. That on Application by the Respondents, the Tribunal dismissed the reference and the interim orders for want of prosecution. That the delay in prosecuting the reference was because of a pending succession case that was concluded in 2023. That they are apprehensive that with the orders having been vacated, they might be evicted from the premises despite having a valid claim thus rendering their appeal nugatory. That there will be no irreparable damage occasioned to the Respondents if the orders sought are granted.
3. The Application is opposed by the Respondents vide the Replying Affidavit sworn by Loise Mwia Musili on the 13/9/24. She deponed that the Applicant's motion is fatally defective and an abuse of the process of the Court. That in the main the Environment and Land Court has no jurisdiction to determine the dispute between the landlord and tenant and the appeal ought to have been filed in the High Court.
4. In addition the deponent stated that the succession cause merely identified the beneficiaries and the assets of the deceased and attended to the distribution and has nothing to do with the Landlord -tenant relationship. That they were sued in the succession cause as intermeddlers and not beneficiaries and that in any event they failed to comply with the Court orders directing them to render accounts.
5. With respect with the case at the Tribunal the Respondents informed the Court that despite having been filed in 2019 and orders having been issued, the same remained unprosecuted inspite of the Applicants enjoying interim orders. That the landlord tenancy agreement dated the 6/7/2016 between the parties which formed the basis of their relationship expired in 2022 and has never been renewed.
6. That the Applicants continued illegal occupation of the premises in the absence of a tenancy agreement is impeding the beneficiaries from executing the certificate of the confirmation of grant.
7. That Landlord terminated the tenancy agreement vide the notice dated the 14/12/23 effectively terminating on 1/3/2024. That the Tribunal matter is clearly overtaken by events and that there is nothing left for determination.
8. Despite directions to file written submissions, only the Respondents complied. I have read and considered the same.
9. The key issue is whether the Application is merited.
10. Before I discuss the main issue I would like to address the objection raised by the Respondent in their Replying Affidavit impugning the jurisdiction of this Court. The Respondent holds the view that this Court is devoid of jurisdiction to hear the matter and that it should have been filed at the High Court.
11. The answer to the objection is found in Section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* which states as follows;

“Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:



Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

12. In view of the express provisions of the law enunciated above, the objection is without any legal basis and it is dismissed.
13. The case of the Appellants is that they have had a landlord tenant relationship with the Respondent since 2016. That they filed a case in the Tribunal and obtained orders which case was dismissed for want of prosecution. Neither the Ruling nor orders dismissing the case were enclosed for the perusal of the Court. In the absence it is difficult for the Court to know the nature of the orders issued.
14. Further the Court notes that the Applicant was economical with the facts relevant to the Application and failed to disclose when the reference was dismissed or when the interim orders were vacated. The Court has sighted the Application by the Respondents dated the 18/4/24 seeking inter alia the dismissal of the reference, the vacation of the interim orders and the eviction of the Applicants from the premises.
15. He who alleges must prove. I find that the Applicants are disentitled from orders of status quo for non-disclosure of material facts.
16. With respect to stay of execution of the orders issued, the Court observes that the nature of the orders to be stayed have not been disclosed. In the absence of the orders or the Ruling, it will be difficult for the Court to act in a vacuum.
17. In the end I find that the Applicants Application is unmerited. It is dismissed with costs.
18. Costs are in favour of the Respondents.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 22ND DAY OF NOVEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Weyimi for the 1st and 2nd Applicants

Muthomi for 1st, 2nd and 3rd Respondents

Court Assistant – Phyllis

