



**Njeru v Sialala (Environment and Land Appeal 1 of 2023)
[2025] KEELC 585 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 585 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 1 OF 2023
OA ANGOTE, J
FEBRUARY 13, 2025**

BETWEEN

MARY W NJERU APPELLANT

AND

ALEXANDER KIPAIYU SIALALA RESPONDENT

RULING

1. The Appellant filed an application on 4th February 2025, in which she asserts that there has been contempt of this court's order issued on 29th June 2023. The Appellant depones that she was forcibly and unlawfully evicted from her premises on 7th October 2024 by Thomas Sankei Kagoshi despite the court orders.
2. Mary Njeru averred that her workshop, from which she conducted a furniture business under the name 'Furniture Land', was broken into and several items were stolen. The Appellant has requested that this court issue a breaking order, to allow her to regain access to her business premises to resume operation and continue with her business activities.
3. She avers that she has been a tenant in the Respondent's premises for five years, in which time she has been paying her rent without failure. She further stated that she was not informed that there was change of ownership of the suit premises.
4. The Appellant has adduced copies of court orders issued by Justice Oguttu Mboya and photographs of the subject premises. The Appellant also referred to the orders of Justice Mogeni and Hon. Omollo (DR).
5. The Respondent has opposed the application through a Replying Affidavit dated 4th February 2025. He deponed that the Appellant filed a complaint against him at the Business Premises Rent Tribunal at Nairobi in Case No. E413 of 2022, together with two applications dated 12th and 17th May 2022.



- He asserts that these applications were heard and through a ruling dated 9th January 2023, the Tribunal conclusively determined the complaint together with the applications which were dismissed.
6. The Respondent deponed that the Appellant filed the said complaint at the Tribunal after he served her with demand letters to vacate the suit premises and to pay her rent arrears of well over Kshs. 300,000 due and owing to him, and that these arrears remain unpaid to date. The deponent asserted that he entered into a lease agreement with the Appellant on 1st January 2020 and that the tenancy period ran from 1st January 2020 up to 31st December 2021.
 7. It was the Respondent's deposition that he sold the suit premises to Thomas Kagoshi Sankei on 15th July 2022 and the transfer was effected on 1st September 2022. According to the Respondent, the fact that he had already sold and transferred the suit premises to Thomas Kagoshi Sankei was within the Appellant's knowledge as evidenced in his Replying Affidavit that was filed in response to the application filed by the Appellant in ELC Misc E033 of 2023.
 8. It was deposed that in the Miscellaneous Application E033 of 2023, the Appellant had sought orders of stay of execution pending appeal; that in his Replying Affidavit to the Miscellaneous Application, he stated that he had already sold and transferred the suit premises and that upon hearing ELC Misc. E033 of 2023, Justice Mogeni declined to stay the ruling of the Tribunal.
 9. The Respondent further asserted that the Appellant is aware that he sold the premises to Thomas Kagoshi Sankei as it was on this basis that she filed a complaint at the Business Premises Rent Tribunal against the said Thomas Kagoshi Sankei vide BPRT E661 of 2023; that in its determination, the Tribunal terminated the tenancy between the Appellant and Thomas Kagoshi Sankei and that the Tribunal ordered that the Appellant vacate the premises within 30 days and pay the outstanding arrears of Kshs. 84,000.
 10. According to the Respondent, the Appellant has since appealed this determination in ELC Land Appeal Case No. 11 of 2024, in which she has sought a stay of execution of the order of the Tribunal dated 29th August 2024 in Case No. BPRT E661 of 2023. The Respondent urged that the Appellant cannot therefore allege that she is unaware of the change of ownership of the suit premises from himself to Thomas Kagoshi Sankei.
 11. The Respondent argued that he was informed by the said Thomas Kagoshi Sankei that he evicted the Appellant on 7th October 2024 in furtherance of the Business Premises Rent Tribunal Order dated 29th August 2024.
 12. He asserted that contempt of court is in the nature of criminal proceedings and proof of a case against a contemnor is higher than on a balance of probability. Additionally, that the Appellant must prove willful and deliberate disobedience of the court order if she is to succeed and that the Appellant has not demonstrated that he is in any way liable for her eviction.
 13. The application was canvassed through oral submissions in court.

Submissions

14. In her oral submissions, the Appellant averred that there have been many cases between the parties. She submitted that on 6th May 2022, when BPRT E413 of 2022 was still pending before the Tribunal, she was attacked at the suit premises and that criminal investigations of the said attack on the basis of arson, theft, malicious damage and illegal eviction, are still ongoing at the Ongata Rongai Police Station.
15. She submitted that on 7th October 2024, a day before ELC Misc E033 of 2024 was to come before Judge Oguttu, the Respondent removed all the items that were inside the suit premises and threw them



- outside; that they blocked the entrance to the suit premises using stones and welded the door shut and that they did this despite the order dated 6th July 2023 which she had duly served upon the Respondent.
16. According to the Appellant, they were to come to court on 8th October 2024 to be heard but no one complied with the earlier order and that the owner of the suit property committed contempt of court on 7th October 2024.
 17. Mr. Moseti for the Respondent submitted that the Appellant's problem started in 2022 when the Respondent approached her to pay rent arrears; that she then moved to the Business Premises Rent Tribunal and filed BPRT E413 of 2021 which was determined on 9th January 2023; that the Appellant then moved this court and that all her applications to stay the decision of the Tribunal have been dismissed.
 18. Counsel for the Respondent asserted that the Appellant filed ELC Misc E033 of 2023 in which she sought stay of execution pending appeal; that the application was heard by Mogeni J, and was dismissed by the ruling of 29th June 2023; that the Respondent filed a Replying Affidavit in response to the application and that at that time, the Respondent had already sold the suit property to Thomas.
 19. Counsel stated that the Appellant filed another complaint at the BPRT through BPRT E661 of 2023 against Thomas; that the matter was heard and an order was given by the Tribunal on 29th August 2024; that the Appellant was to be evicted within 30 days in accordance with the order of the Tribunal and that the said order was effected by Thomas on 7th October 2024.
 20. Counsel denied knowledge of any order barring the Appellant's eviction and that the subsequent order that was given by the Tribunal for her eviction was between the Appellant and Thomas.
 21. Counsel submitted that the Appellant has not proved her allegation of contempt; that none of the orders stayed the orders of eviction and that all the orders she has relied on have nothing to do with the current application for contempt. This includes the ruling by Oguttu J on 8th October 2024, in which he declined to order for stay of execution.

Analysis and Determination

22. This court has considered the Plaintiff's application, the Respondent's Replying Affidavit and the oral submissions made by the parties. The issue for this court's consideration is whether the application for contempt of court is merited. The Appellant has argued that her eviction from the suit premises by Thomas Sankei Kagoshi on 7th October 2024 was in violation of the court orders dated 29th June 2023 and 6th October, 2024.
23. The elements of the offence of contempt are set out in Cecil Miller vs Jackson Njeru & Another [2017] eKLR :-
 - a. The terms of the order/or injunction or undertaking, were clear and unambiguous and were binding on the defendants;
 - b. The Defendant had knowledge of or proper notice of the terms of the order;
 - c. The Defendant acted in breach of terms of the order and;
 - d. The Defendant's conduct was deliberate.
24. As has been attested by the parties, this dispute has been the subject of multiple applications before this court as well as before the Business Premises Rent Tribunal.



25. There is no contest that a Tenant and Landlord relationship subsisted between the Appellant and the Respondent. The Respondent has presented a copy of a lease agreement dated 1st January 2020 between himself and the Appellant. The lease was to run from 1st January 2020 to 31st December 2021.
26. The Appellant instituted Tribunal Case No. E413 of 2022 before the Business Premises Rent Tribunal on 13th May 2022. In her complaint, she stated that her business premises “Furniture Land” had been invaded by the landlord who had forcefully evicted her and damaged her property.
27. In its ruling dated 9th January 2023, the Tribunal dismissed the Appellant’s complaint and applications after holding that the Appellant had not established that she enjoyed a controlled tenancy under Cap 301 of Laws of Kenya.
28. Following this determination, the Appellant instituted this Appeal on 24th January 2023, raising several grounds against the determination of the Business Premises Rent Tribunal. This appeal is yet to be heard and determined on its merits.
29. The Appellant additionally filed the case of ELC Miscellaneous E033 of 2023 Mary W. Njeru vs Alexander Kipaitu Sialala, seeking orders of stay of execution against the ruling of the Business Premises and Rent Tribunal dated 9th January 2023 issued in BPRT E413 of 2022 pending hearing and determination of the intended appeal. The Appellant also filed a second application dated 24th February 2023 in which she sought for leave to file her appeal as a pauper.
30. In a final ruling dated 29th June 2023, the Honourable Lady Justice Jacqueline Mogeni dismissed the application dated 9th January 2023. The Honourable Judge declined to grant the Appellant the order of stay of execution sought against the ruling of the Tribunal. According to the Judge, the Appellant had not placed before the court any evidence to show that she paid rent for the suit premises.
31. The court however allowed the application dated 24th February 2023, in which she granted the Appellant leave to file the appeal as a pauper and ordered that the Memorandum of Appeal be deemed as duly filed. The orders of Mogeni J dated 29th June 2023 did not therefore stay the execution of the Tribunal’s ruling which had dismissed the Plaintiff’s complaint.
32. Further still, contrary to the Appellant’s claims, the court did not grant orders of status quo between the parties. These orders can therefore not be the basis of the Appellant’s claim that Thomas Sankei Kagoshi or the Respondent are in contempt of court because they evicted her.
33. The Appellant has additionally referred to the order issued by the Honourable Justice Oguttu Mboya on 8th October 2024. The said orders were issued pursuant to the Appellant’s application seeking stay of execution of the orders of the Business Premises and Rent Tribunal in BPRT E661 of 2023.
34. In its orders, the court certified the application as urgent and scheduled the matter for inter parties hearing on 30th October 2024. The court however declined to issue any interim orders of stay of execution, as it found that the orders of the Tribunal appealed against are negative, after the Appellant’s complaint was dismissed. The court held that such orders cannot attract an order of stay of execution.
35. The Appellant also relied on the orders of Hon. Omollo (DR). The court has seen the orders of 30th July, 2024. In the said orders, the Deputy Registrar directed as follows:
 1. That record of appeal to be served by the court process server within 14 days.
 2. That Business Premises Rent Tribunal file to be availed.
 3. That mention of 8th October, 2024.



4. That process server to also serve the mention notice.
36. The orders by Hon. Omollo did not grant any order staying the orders of eviction. Indeed, I have also come across the orders of Mbugua J in ELCA 11 of 2024 between the Appellant and Thomas Kagoshi Sankei dated 4th October, 2024. In the said orders, the court directed the Appellant to serve the said Thomas with her application dated 27th September, 2024 and fixed a ruling date of 6th November, 2024.
37. Indeed, had Mbugua J. granted interim orders restraining the said Thomas from evicting the Appellant, then the eviction of 7th October, 2024 would have been illegal. However, the judge declined to issue interim orders. None of the orders alluded to above granted the Appellant stay of execution of the Tribunal's ruling (s), and neither did they in any way bar the owner of the premises, Mr. Thomas Sankei Kagoshi from evicting the Appellant.
38. Secondly, it is evident that the Appellant has claimed that her eviction was by Thomas Sankei Kagoshi and not by the Respondent. Mr. Thomas Sankei Kagoshi is not a party to this suit, and the Appellant has not claimed that he is an agent or employee of the Respondent. There is therefore no basis for this court to find that he is bound by the rulings of this court, if any.
39. The Respondent has brought to this court's attention the proceedings in ELC Appeal No. 11 of 2024 Mary W. Njeru v Alexander Kipaisatu Sialala, in which the Appellant sought a stay of execution of the order of the BPRT E661 of 2023.
40. This court takes due notice that through a ruling dated 6th November 2024, the Honourable Lady Justice Lucy Mbugua dismissed the entire appeal having found that the appeal was not filed in good faith and amounts to an abuse of court processes.
41. The Honourable Judge found no evidence of tenancy relationship between the Appellant and Thomas, and held that the Plaintiff's claim to be allowed to stay in the suit premises is unfounded. The court also found that the filing of multiple cases by the Appellant amounts to an abuse of court processes.
42. In this court's opinion, it would be prudent for the Appellant to focus on the determination of this appeal on its merits. Indeed, it is only after this court has heard the appeal that it will determine if the Tribunal erred in its determination (s), and the appropriate orders to grant. To the extent that none of the orders the Appellant has referred to stayed the orders of eviction that were granted by the Tribunal, the Appellant's recourse is in pursuing the main appeal.
43. In conclusion, this court finds that the Appellant has not established any basis for her application for contempt against the Respondent in this appeal.
44. The said application is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mary Njeru Appellant in person

No appearance for Respondent

Court Assistant: Tracy

