



Adolwa v Evangelical Lutheran Church in Kenya (Environment and Land Appeal E074 of 2024) [2024] KEELC 13397 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E074 OF 2024
E ASATI, J
NOVEMBER 14, 2024**

BETWEEN

PATRICK ADOLWA APPELLANT

AND

EVANGELICAL LUTHERAN CHURCH IN KENYA RESPONDENT

(Being an appeal from the ruling and decree delivered by Hon. J. A. Osodo on the 29th day of August 2024 in the Business Premises Rent Tribunal Case No. E016 OF 2024, Kisumu)

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion dated 16th September, 2024 and expressed to be brought pursuant to the provisions of article 48 and 50 of *the Constitution* of Kenya 2010 and section 1A, 1B and 3A of the Civil Procedure Rules.
2. The application seeks for an order that the court be pleased to stay and set aside the ruling delivered on 29th August, 2024 in Business Premises Tribunal Case No. E016 OF 2024, KISUMU.
3. The grounds upon which the application was brought as stated on the face of the Notice of Motion and the Supporting Affidavit are that the Landlord issued Notice of Termination of Tenancy and at the same time proceeded to lock the tenancy premises before expiry of the Notice. That the matter ended up in the Business Premises Tribunal whose ruling dated 29th August, 2024 the Applicant was dissatisfied with and has preferred the appeal herein.
4. The application was opposed vide the grounds of Opposition dated 1st of October, 2024. It was the Respondent’s case that the Applicant has come to court with unclean hands as he has persisted in non-payment of rent accumulating arrears of Kshs.20,019,500 as at the time of filing the Grounds of Opposition. That the application has not met the threshold for grant of an order of stay of execution, that the application is incompetent, defective and bad in law and that the Appellant was heard by the



Tribunal. The Respondent also filed a Replying Affidavit sworn by one Sylvester Ochieng Owuondo on 1st October, 2024.

The application was argued orally on 2nd October, 2024.

5. I have considered the application, the grounds of opposition thereto and the submissions made.
6. The order sought is for stay of execution and setting aside of the ruling appealed against. The relief sought in the appeal is setting aside of the Tribunal's decision. To allow the application and set aside the decision of the Tribunal at this stage of the appeal, will be tantamount to allowing the appeal without hearing it.
7. I find that the application lacks merit and hereby dismiss it. Costs to the Respondent.
8. Let the Applicant fast-track hearing and disposal of the appeal by filing and serving the record of appeal.
Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 14TH DAY OF NOVEMBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Magotsi for the Applicants

Otieno Ochich for the Respondent.

