



**Nzioki v Omoni & another (Environment and Land Appeal  
E140 of 2024) [2024] KEELC 13570 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13570 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E140 OF 2024  
LN MBUGUA, J  
DECEMBER 5, 2024**

**BETWEEN**

**BEN NZIOKI ..... APPELLANT**

**AND**

**GRACE OMONI ..... RESPONDENT**

**AND**

**ISHMAEL MWEA ..... DEFENDANT**

**RULING**

1. This appeal was triggered by a judgment delivered on 29.8.2024 by the Rent Restriction Tribunal at Nairobi in Tribunal Case No. E551 of 2022 wherein the plaintiff was ordered to pay accrued rent arrears of ksh.324,000/=, vacate the suit premises within 30 days and bear the costs of the suit.
2. Vide a Notice of Motion dated 11.9.2024, the appellant sought stay of the aforementioned judgment pending appeal and on 24.9.2024, this court granted him stay pending hearing of the said application on condition that he would deposit ksh.324,000/= in an interest earning account in the joint names of his advocate and the advocate for the respondent by 8.10.2024. The appellant apparently did not comply with the aforementioned condition. Instead, he filed another application dated 25.10.2024 which is for determination.
3. In essence, he seeks a review of this court's ruling of 24.9.2024 in terms of amending the orders of the court to remove the conditional stay of ksh.324,00/= and that in the alternative, the condition to pay the said sum be reduced to ksh.100,000/=.
4. The application is based on grounds on its face and on the appellant's supporting and further affidavits. He avers that despite being desirous of continuing with the appeal, the sum of ksh.342,000/= is too



- steep for him to meet as he works in the tourism industry as a tour company operator which business has been adversely economically affected rendering his sole source of income unprofitable.
5. He also contends that the conditional stay is prejudicial to him since he has a prima facie case with a probability of success since he has no accrued rent arrears owed to the respondents adding that the figure of ksh.324,000/= is unreasonable and out of his reach thus it contravenes the provisions of Article 48 of the Constitution.
  6. He also argues that the deadline of 8.10.2024 which was 14 days from the date of issuance of the order of conditional stay on 24.9.2024 was restrictive and makes justice inaccessible.
  7. Vide grounds of opposition dated 28<sup>th</sup> October 2024, the respondents urges the court to dismiss the appellant's applications dated 11.9.2024 and 25.10.2024 since he made no attempts to comply with orders of 24.9.2024, adding that the issues raised are sideshows actuated to deny them fruits of their judgement and an attempt to bend orders in a manner that unilaterally favours the appellant.
  8. I have considered all the arguments raised herein including the oral submissions made by the rival parties.
  9. On 24.9.2024, this court exercised its discretion and gave the appellant interim relief in terms of conditional stay provided he deposited the sum of ksh.324,000/= in an interest earning account by 8.10.2024.
  10. In doing so, this court appreciates that the purpose of the security needed under Order 42 of the Civil Procedure Rules is not to punish the appellant as the appellant herein insinuates. Be that as it may, the appellant is in breach of the said order since he failed to pay as directed and the consequence of his failure to pay is that the interim stay lapsed.
  11. Over 17 days after the lapse of the deadline within which he was to pay ksh.345,000/=, the appellant filed the instant application seeking this court's discretion to review its orders of 24.9.2024. This court finds that the application was brought rather late after the lapse of the deadline, and that the appellant has not demonstrated grounds to warrant review of this court's orders as required under Order 45 of the Civil Procedure Rules as read with Section 80 of the Civil Procedure Act.
  12. Additionally, the court was not given sufficient evidence on which it would base its reasoning to allow the orders sought. See the case of Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates, Nishit Raikundalia & Sapphire Trading & Marketing Ltd [2014] KEHC 2430 (KLR).
  13. To this end, the appellant's application dated 11.9.2024 is overtaken by events while his application dated 25.10.2024 is found to be unmerited and the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>th</sup> DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Makau for Appellant

Nzaku for Respondent

Court Assistant: Vena

