



**Anupi Fashions Limited v Mwea Rice Mills Limited & 2 others (Environment & Land Case 17 of 2020) [2025] KEELC 2945 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2945 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 17 OF 2020**

**CA OCHIENG, J**

**MARCH 26, 2025**

**BETWEEN**

**ANUPI FASHIONS LIMITED ..... PLAINTIFF**

**AND**

**MWEA RICE MILLS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MURAGE ESTATE AGENTS ..... 2<sup>ND</sup> DEFENDANT**

**JEREMIAH KIARIE MUCHENDU T/A ICON AUCTIONEERS .... 3<sup>RD</sup>  
DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 6<sup>th</sup> November 2024, which is brought pursuant to Order 45 Rule 1 & Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. The Plaintiff seeks the following orders:
  - a. That the Honourable court be pleased to review and /or set aside the orders issued in the ruling dated 26<sup>th</sup> September 2024 by Hon. Justice Lucy N. Mbugua and substitute them with an order directing that this suit proceeds for judgement.
  - b. That the cost of this application be provided for.
3. The application is premised on grounds on its face and on the supporting affidavit of the Plaintiff's director, one Kiran Shah sworn on 6<sup>th</sup> November 2024. He avers that vide a Ruling delivered on 26<sup>th</sup> September 2024, this court set aside delivery of judgment, proceedings of 14<sup>th</sup> July 2023 and also stayed the matter awaiting determination of the BPRT case.



4. He contends that the Plaintiff was a controlled tenant at Leader House, Shop 'A' owned by the 1<sup>st</sup> Defendant and managed by the 2<sup>nd</sup> Defendant. He claims that on the 1<sup>st</sup> October 2019, the 2<sup>nd</sup> Defendant issued a notice to terminate the tenancy citing intended renovations as the reason for termination. Subsequently, the Plaintiff challenged the termination notice by filing a reference at the Business Premises Rent Tribunal (BPRT), being BPRT CASE No.1047 of 2019: Anupi Fashions Limited v Mwea Rice Mills Limited.
5. He contends that despite the general rule that a tenancy notice is suspended once a reference is filed with the Tribunal, the Defendants unlawfully evicted the Plaintiff thereby compelling it, to file the instant suit as the landlord –tenant relationship had been terminated since the BPRT's jurisdiction was ousted upon eviction.
6. Further, that the reliefs sought in this suit arise from the unlawful eviction which are materially distinct from those initially sought before the BPRT and only this court has jurisdiction to grant them. He reiterates that the BPRT case was effectively abandoned as the reliefs sought in the reference had been overtaken by events due to the unlawful eviction. Further, that BPRT was then duly notified that the tenancy had ended albeit irregularly following which, it proceeded to close the said case and despite the developments, this court moved suo moto and stayed proceedings and delivery of judgment without affording the parties an opportunity to ventilate and canvass the developments and specifically the fact that BPRT case was closed.
7. He contends that had the parties been given a chance to argue their issues, the court would have reached a different conclusion and that if the orders of 26<sup>th</sup> September, 2024 are not set aside, the same would occasion significant prejudice to the Plaintiff.
8. The application is unopposed. Parties did not file submissions.

### **Analysis and Determination**

9. Upon consideration of the instant Notice of Motion application including the supporting affidavit, the only issue for determination is whether the ruling delivered on 26<sup>th</sup> September 2024 staying the proceedings of 14<sup>th</sup> July, 2023 and delivery of judgment, should be reviewed and or set aside.
10. On review, section 80 of the [Civil Procedure Act](#) stipulates that:

“ Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
11. While Order 45, rule 1 (1) of the Civil Procedure Rules provides that:

“ Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review



of judgment to the court which passed the decree or made the order without unreasonable delay.”

12. Courts are clear that an application for review must be brought within the grounds set out in Order 45 Rule 1 (b) of the Civil Procedure Rules. In *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, the court of appeal stated;

“ An application for review must be specific on the ground on which it is brought”

13. While in *Samuel Amugune & 4 others v Attorney General* [2018] eKLR, the court stated as follows:

“We have analyzed the affidavit filed in support of the application for review dated 28<sup>th</sup> January 2013 deposed by Mr. Christopher Maloba. The affidavit discloses new and additional evidence that was not before the trial court on 8th October 2004 when judgment was delivered.”

14. In this instance, the Court had suo motu stayed proceedings of 14<sup>th</sup> July, 2023 and the delivery of the judgment, since there was a related matter pending at the BPRT. It is the Plaintiff’s contention that the BPRT case had been abandoned as the reliefs sought in the reference had been overtaken by events due to its unlawful eviction. Further, once the BPRT was notified that the tenancy had ended, it proceeded to close the said case and despite the developments, this court moved suo moto and stayed proceedings and delivery of judgement without affording the parties an opportunity to be heard on these developments.

15. Based on the facts before me, while relying on the legal provisions cited and associating myself with the decisions quoted, noting that this application is unopposed, I opine that staying these proceedings including delivery of judgment was an error apparent on the face of record since the BPRT had been closed, prior to the issuance of the orders of 26<sup>th</sup> September, 2024. In my view, since the Plaintiff had already been evicted, the Court had jurisdiction to determine the issues raised herein. In the foregoing, I opine that the Plaintiff has fulfilled the conditions set under Order 45 of the Civil Procedure Rules to warrant the review of the orders issued on 26<sup>th</sup> September 2024 and for the matter to proceed for judgement.

16. In the circumstances, I find the instant Notice of Motion application merited and will allow it but make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>th</sup> DAY OF MARCH 2025**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Ludenyo for Plaintiff

Court Assistant: Joan

