



**Obimbo v Ochieng (Environment and Land Appeal E037 of 2022)
[2023] KEELC 731 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 731 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E037 OF 2022
SO OKONG'O, J
FEBRUARY 14, 2023**

BETWEEN

HARRISON OBIMBO APPELLANT

AND

AGNETTE ATIENO OCHIENG RESPONDENT

RULING

1. At all material times, the appellant was and still is the respondent's tenant on all that parcel of land known as Plot No 57, Migosi estate, Kisumu (hereinafter referred to as "the suit property"). Sometime in 2016, the appellant filed a suit against the respondent at the Rent Restriction Tribunal (hereinafter referred to as "the tribunal") namely, Kisumu Rent Restriction Case No 32 of 2016. The nature of the appellant's claim against the respondent before the tribunal is not clear from the material on record since the appellant has not placed before the court the pleadings and proceedings before the tribunal. From what is before the court, it appears that the respondent who was the appellant's landlady wanted to increase the appellant's rent from Kshs 11,000/- per month to Kshs 13,000/- per month and the appellant sought an order from the tribunal to restrain the respondent from increasing rent and for the assessment of the standard rent. The respondent on the other hand appears to have sought an order to access the suit property for the purposes of carrying out some repairs thereon.
2. On September 26, 2022, the tribunal adopted a valuation report dated September 9, 2022 in which the rent for the suit property was assessed at Kshs 15,000/- per month. The tribunal ordered that the new rent takes effect from November 1, 2022. The tribunal made a further order that the appellant grants the respondent access to the suit property within 30 days from the date of the order to carry out repairs.
3. On October 24, 2022, the appellant filed the present appeal. In his memorandum of appeal dated October 24, 2022, the appellant stated that the appeal is against the decision of the tribunal made on March 30, 2022 in tribunal Case No 437 of 2019. Together with the memorandum of appeal, the appellant filed a notice of motion application dated October 26, 2022 seeking an order for a temporary



stay of execution of “the judgment and order” of the tribunal made on September 26, 2022 “in RRT No 437 of 2022” pending the hearing and determination of the appeal herein. This is the application that is before me for determination.

4. The application is brought on the grounds set out on the face thereof and on the affidavit of the appellant sworn on October 26, 2022. The appellant has averred that he had a suit before the tribunal and that he is dissatisfied with the decision of the tribunal as a result of which he has preferred this appeal. The appellant has averred that his appeal has a high chance of success and that the same will be rendered nugatory if the decision aforesaid by tribunal is not stayed. In his affidavit in support of the application, the appellant has averred that in a judgment delivered on September 26, 2022, the tribunal ordered him to provide the respondent with access to carry out the necessary repairs on the suit property failure to which he will be evicted therefrom. The appellant has averred further that he has an arguable appeal and that he will suffer prejudice if the stay sought is not granted.
5. The application is opposed by the respondent through a replying affidavit sworn on November 16, 2022. The respondent has averred that the appellant was her tenant on the suit property paying a monthly rent of Kshs 11,000/-. The respondent has averred that she served the appellant with a notice of her intention to increase the monthly rent from Kshs 11,000/- to Kshs 13,000/-. The respondent has averred that the appellant refused to pay the new rent and continued to pay the old rent of Kshs 11,000/-. The respondent has averred that as a result of the appellant’s refusal to comply with her notice to increase rent, she served the appellant with a notice to vacate the suit property. The respondent has averred that it was in response to that notice that the appellant filed Kisumu Rent Restriction tribunal Case No 32 of 2016 and sought an order to restrain her from increasing rent to Kshs 13,000/-.
6. The respondent has averred that the appellant sought the assessment of the standard rent. The respondent has averred that an assessment of the standard rent was done with the involvement of the appellant and an assessment report dated September 9, 2022 filed at the tribunal. The respondent has averred that the standard rent for the suit property was assessed at Kshs 15,000/- per month and on September 26, 2022, the tribunal adopted the said report and ordered the appellant to pay a monthly rent of Kshs 15,000/- to the respondent with effect from November 1, 2022. The respondent has averred that the appellant has refused to pay the assessed rent. The respondent has averred that the appellant has come to court with unclean hands and his appeal has no chance of success.
7. The application came up for hearing on February 13, 2023 when the parties relied entirely on their affidavits filed in support of and in opposition to the application. I have considered the appellant’s application together with the affidavit filed in support thereof. I have also considered the replying affidavit filed by the respondent in opposition to the application. The appellant’s application has been brought under order 42 rule 6 of the *Civil Procedure Rules*. Order 42 rule 6(2) of the [Civil Procedure Rules](#) provides that:

- “(2) No order for stay of execution shall be made under sub-rule (1) unless –
 - (a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) Such security as the court orders for the due performance of such decree or order as ultimately be binding on him has been given by the applicant.”



8. In *Kenya Shell Limited v Karuga* (1982 1988) I KAR 1018 the court stated that:

“It is usually a good rule to see if order XLI rule 4 of the *Civil Procedure Rules* can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money.”

9. I am not persuaded that the appellant’s application has met the threshold for granting an order for a stay of execution. First, I am of the view that there is no competent appeal before the court that can form a basis for the order sought in the application under consideration. As I mentioned earlier, the appellant’s appeal according to his memorandum of appeal is against a decision that was purportedly made by the tribunal on March 30, 2022 in Rent Restriction Tribunal Case No 437 of 2019. In his application, the appellant has sought a stay of the judgment and order that was purportedly made by the tribunal on September 26, 2022 in Kisumu Rent Restriction Tribunal Case No 437 of 2022. Since the appeal filed by the appellant is not against the judgment and order that was made by the tribunal on September 26, 2022 in Kisumu Rent Restriction Tribunal Case No 437 of 2022, there is no basis or foundation for the stay sought. An application for a stay of the judgment and order made on September 26, 2022 in Rent Restriction tribunal Case No 437 of 2022 cannot be based on an appeal filed against a judgment of the tribunal made in Rent Restriction Case No 437 of 2019 on March 30, 2022. I have noted from the order by the tribunal annexed to the affidavit in support of the appellant’s application that the order complained of was actually made on September 26, 2022 in Kisumu Rent Restriction Case No 32 of 2016. The order was not made in Rent Restriction Case No 437 of 2022 or 437 of 2019. There is no competent appeal before the court on which the current application for stay can be based. The application is therefore not for granting.
10. Even if it is assumed that there is a competent appeal against the order that was made by the tribunal on September 26, 2022, I would still not have granted the order sought. I am not satisfied that the appellant would suffer substantial loss if the stay sought is not granted. From my reading of the order of the tribunal, the tribunal did not order the appellant to vacate the suit property. The appellant was merely ordered to grant the respondent access to the suit property to enable her to carry out repairs on the premises and also to pay rent at the rate of Kshs 15,000/- with effect from November 1, 2022 in accordance with the valuation report dated September 9, 2022 that was prepared pursuant to his own application for rent assessment.
11. The appellant has not convinced me that he will suffer substantial loss if he pays a rent of Kshs 15,000/- per month to the respondent with effect from November 1, 2022 and also grants the respondent access to the suit property to carry out repairs pending the hearing and determination of the appeal herein. In the absence of evidence of the possibility of substantial loss being suffered by the appellant if the stay order sought is not granted, the application must fail.
12. The upshot of the foregoing is that the appellant’s application dated October 26, 2022 has no merit. The application is dismissed with costs to the respondent.

DELIVERED AND DATED AT KISUMU ON THIS 14TH DAY OF FEBRUARY 2023

S. OKONG’O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:



N/A for the Appellant

The Respondent in person

Ms. J.Omondi-Court Assistant

