



**Walela v Chatur & 2 others (Tribunal Case E664 of 2023)  
[2024] KEBPRT 1746 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1746 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E664 OF 2023  
P MAY, MEMBER  
DECEMBER 13, 2024**

**BETWEEN**

**ELIAS BARASA WALELA ..... TENANT**

**AND**

**MADATALI CHATUR ..... 1<sup>ST</sup> LANDLORD**

**MIRIHI LIMITED ..... 2<sup>ND</sup> LANDLORD**

**AND**

**PETER JOHN ..... CARETAKER**

**RULING**

1. The Tribunal delivered a judgement on 2/7/2024 in favour of the tenant. The landlord was granted stay of execution for 45 days. The landlord was aggrieved by the said decision and has lodged an appeal at the High Court. Subsequently, the landlord filed an application dated 9<sup>th</sup> August 2024 seeking for orders of stay pending appeal. This application is the subject of this ruling.
2. The application is premised on the grounds set out on the face of the application and those enumerated in the supporting affidavit sworn by the 2<sup>nd</sup> Landlord's legal officer. The parties elected to canvass the application by way of written submissions.
3. The principles that guide the courts and Tribunals while considering an application for stay pending appeal are now well settled. The substantive provision for grant of stay pending appeal is to be found under order 42 rule 6 of the Civil Procedure Rules.

Order 42 rule 6 provides in part as follows:-

- “ 6. No appeal or second appeal shall operate as a stay of execution or proceedings  
(1) under a decree or order appealed from except in so far as the court appealed



from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (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 may ultimately be binding on him has been given by the applicant
- . Notwithstanding anything contained in sub-rule (2), the court shall have
- (3) power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application
- . For the purposes of this rule an appeal to the Court of Appeal shall be deemed
- (4) to have been filed when under the rules of that court notice of appeal has been given.”

4. The Court of Appeal in *Butt v Rent Restriction Tribunal* [1982] KLR 417 gave guidance on how a court should exercise discretion and held that:

- “ 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
- 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
- 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
- 4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
- 5. The court in exercising its powers under order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”



5. Albeit the above principles were cited in an application for stay pending appeal, I find them relevant to cases of stay of execution of decree pending other proceedings. Has the Applicant demonstrated that substantial loss may result unless the orders of stay of execution are made? I have perused the Applicant's affidavit in support of its application and the affidavit in my view seems to address itself to the merits of the Appeal filed by the landlord /Applicant and not the loss the landlord is likely to suffer if the orders sought are not granted. It is not enough to merely state that the Applicant was ordered to pay Kshs. 1,510,250/=. The Applicant is under a duty to demonstrate the damages it would suffer if the order for stay is not granted.
6. In the case of; Kenya Shell Ltd vs Kibiria [1986] KLR 440, the court at page 416 stated as follows:-
- “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 where an appeal would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone 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.” And further at page 417, the court stated; “it is not sufficient by merely stating that the sum of Kshs. 20,380.00 is a lot of money and the Applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the Applicant should show the damages he would suffer if the order for stay is not granted. By granting stay would mean that the status quo should remain as it were before judgment. What assurance can there be of the Appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgment.”
7. I am not satisfied that the landlord has demonstrated the loss it will suffer if the orders are not granted. There has been no suggestion that the Respondents would be unable to refund the sum awarded if the landlord eventually succeeds in its appeal. The application dated 9<sup>th</sup> August, 2024 is dismissed.

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF DECEMBER 2024.**

in the presence Tenant present and No Appearance for the Landlord

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

