



**Belcom Agencies Limited v Transline Classic Limited (Tribunal Case  
E009 of 2021) [2024] KEBPRT 590 (KLR) (Civ) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 590 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E009 OF 2021  
P MAY, MEMBER  
MAY 21, 2024**

**BETWEEN**

**BELCOM AGENCIES LIMITED ..... LANDLORD**

**AND**

**TRANSLINE CLASSIC LIMITED ..... TENANT**

**RULING**

1. The application before me is the tenant's notice of motion seeking for grant of order of stay execution of the judgement delivered on the 18<sup>th</sup> October, 2023. The application also sought for leave for the tenant to lodge their appeal against the said judgement. The application is premised on Sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6, Order 43 Rule 1(3) and Order 51 Rule 1 of the Civil Procedure Rules and Article 48 of the Constitution of Kenya.
2. The tenant averred that they were dissatisfied with the decision rendered by the Tribunal hence were desirous with lodging an appeal before the Environment and Land Court. The tenant stated that the proceedings leading to the judgement having been commenced under section 12(4) of CAP 301, an appeal did not lie as a matter of right. It was the tenant's position that the application had been lodged timeously without any undue delay.
3. The application was opposed by the landlord through the Replying affidavit sworn by one of its directors on 27<sup>th</sup> November, 2023. The landlord averred that the application for stay was without merit and was an attempt to deny the landlord the fruits of its judgement. The landlord stated that the tenant had failed to attach a draft memorandum of appeal which would succinctly explain the grounds under which the tenant sought to appeal against the decision of the Tribunal.
4. The parties were directed to canvass the application by way of written submissions. At the time of drafting the present ruling, only the tenant had filed submissions in support of the application. I have



considered the submissions on record, the application and responses thereto and wish to proceed as follows:

5. At the onset, the Tribunal has to make a determination on whether the prayer for leave to lodge an appeal is merited. It is important to note that the only provision that creates and/or confers a Right of Appeal under the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Chapter 301 Laws of Kenya is Section 15 thereof. For clarity, and for reasons that would thereafter become apparent, it is therefore appropriate to reproduce the said Section.
6. In the premises, the provisions of Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Chapter 301 Laws of Kenya are reproduced as hereunder;

15. Appeal to court:

- (1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:

Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

- (2) In hearing appeals under subsection (1) of this section the Court shall have all the powers conferred on a Tribunal by or under this Act, in addition to any other powers conferred on it by or under any written law.
- (3) Deleted by Act No. 2 of 1970, s. 13.
- (4) The procedure in and relating to appeals in civil matters from subordinate courts to the Environment and Land Court shall govern appeals under this Act:

Provided that the decision of the Environment and Land Court on any appeal under this Act shall be final and shall not be subject to further appeal.

7. It is apparent from the foregoing provisions that the only persons who have a Right of appeal to the Environment and Land Court are Parties to a Reference, who are aggrieved by a determination or order, certainly arising from the reference and not otherwise.
8. It is the Tribunal's view that the determination or order, which is capable of being appealed against by a Party to a reference must be a determination of order arising therefrom and not otherwise. For clarity, what constitute a Reference, has ably been defined by the Act. Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Chapter 301 Laws of Kenya defines a Reference as hereunder;

“Reference” means a reference to a Tribunal under section 6 of this Act;

9. On the other hand, it is also appropriate to note that a Reference under Section 6 would ensue and/or arise, once either a landlord or a tenant has issued and served the requisite Statutory notices, whether for termination, alteration or otherwise, as stipulated and/or envisaged under the provisions of Section 4 of the Act.
10. In view of the foregoing and having considered the provisions of Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Chapter 301 Laws of Kenya, it is explicit that the Right of Appeal is only available to Parties to a Reference, who are aggrieved by a determination or order arising therefrom and a Reference is statutorily circumscribed vide Section 2 of the Act.



11. I am fortified by the similar position that was taken by the Court in the case of *Re-Heptulla Proberties Ltd* [1979] eKLR, where the court observed as hereunder;

A party to a reference has a right of appeal to the High Court against any determination or order made therein, but the maker of a mere complaint has no such right. Mr Gautama argued that, in this context, “reference” must be given a wider meaning and must include a complaint; but in a provision conferring a right of appeal I have no doubt that word “reference” was used in its technical meaning as defined in section 2.

For this view I derive some support from the wording of the appeal provisions before they were amended by Act No 2 of 1970. Appeal then lay to the Court of a Senior Resident Magistrate or Resident Magistrate, with a further and final appeal to the High Court. Section 15(1) then commenced, “any party aggrieved by the determination or order of a tribunal may within fourteen days appeal against the same ...”.

Subsections (1) and (4) of section 12 as quoted above have remained unchanged.

Thus, until 1970, there was a right of appeal against an order made, not only on a reference, but also on a complaint. In inserting the words “to a reference” after the words “any party” and “made therein” after “tribunal” the Legislature must have had some object in mind; and that object could only have been to restrict the right of appeal to the High Court to determinations and orders made on a reference. The Legislature would not have removed the right of appeal to the High Court against orders made on a complaint if the term “complaint” had been intended to include such matters as forcible dispossession by the landlord, an act which amounts to the tort of trespass.

12. The Tribunal is guided by the aforementioned provisions of the law and decisions from the superior courts. It is therefore persuaded that the provisions of Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Chapter 301 Laws of Kenya cannot be stretched to include appeals in respect of Complaints, yet the legislature, namely, the law maker, in their wisdom only intended to confine and restrict appeals to Reference and not otherwise.
13. Consequently, if a Party to a Complaint is keen to lodge and/or mount an appeal against a determination and/or order arising therefrom, then it behooves such a party to seek for and procure leave of the tribunal in the first instance or if declined, to seek and obtain Leave from the Environment and Land Court.
14. Having made the above findings, it is apparent that the prayer for leave was made at the appropriate forum and the same having been made in a timeous manner there would be no plausible reason to deny the applicant the said order.
15. The tribunal will now turn to the merits of the prayer for stay of execution. The principles that guide the courts 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.(1) No appeal or second appeal shall operate as a stay of execution or proceedings 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.
- (3) Notwithstanding anything contained in sub-rule (2), the court shall have 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.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the rules of that court notice of appeal has been given.”
24. 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.”
16. It is clear from the above provisions that the power to grant stay is a discretionary power. The Tribunal has to balance the competing interests between the parties. It should not also be lost to the Tribunal that having made a determination at the trial stage, it should not be seen to interfere with the appeal proceedings.
17. In view of the above, the Tribunal takes cognizance that once a party lodges an appeal, the appellate court shall have an opportunity to grant orders to ensure that the ends of justice are met.
18. The upshot of the above is that:
  - a. An order of stay of execution is hereby issued.



- b. The tenant/applicant is granted leave to lodge an appeal within 14 days from the date hereof.
- c. Each party shall be their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF MAY, 2024.**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**Delivered in the presence of Ayora for the Tenant and in the absence of the Landlord**

