



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. E349 OF 2020

EVANS EGUMU MUDONGOI t/a

MEGALINK MANAGEMENT.....1ST APPELLANT/APPLICANT

ROADTOUCH SERVICES LIMITED.....2ND APPELLANT/APPLICANT

-VERSUS-

ELISHA GOR AGANGO.....RESPONDENT

RULING

The application dated 7th December, 2020 seeks the following orders;

- 1. THAT there be a temporary stay of the execution of the orders of Hon. Chairman HILLARY K. KORIR issued in RENT RESTRICTION TRIBUNAL CASE NO. 583 OF 2020 CONSOLIDATED WITH RRC NO. 1192 OF 2020 on the 25th November, 2020 pending hearing and determination of this application inter-parties.**
- 2. THAT the court be pleased to stay execution of the orders of Hon. Chairman HILLARY K. KORIR issued in RENT RESTRICTION TRIBUNAL CASE NO. 583 OF 2020 CONSOLIDATED WITH RRC NO. 1192 OF 2020 on the 25th November, 2020 pending hearing and determination of the appeal filed by the Appellant.**
- 3. THAT the costs of this application abide the outcome of the Appeal.**

The affidavit sworn on the same day by Evans Egumu Mudongoi supports the application. The respondent was served with the application on 18th December 2020 as per the affidavit of service by Kelvin Balongo but did not file any response. The respondent was also served with a hearing notice on 7th January, 2021 but did not take any action to oppose the application.

The application seeks to stay execution pending the determination of the appeal. The appeal emanates from the Rent Restriction Tribunal. The applicant submit that the respondent was a tenant and defaulted in paying the monthly rent of Kshs.41,000. He accumulated arrears totaling Kshs.574,000 and the landlord levied distress through an auctioneer. The premises were leased out to another tenant but the Tribunal ordered the landlord to reinstate the respondent. The other tenant took possession on 22nd November, 2020. The applicants are apprehensive that the Tribunal might cite them for contempt of court.

The impugned orders were issued on 25th November, 2020 and the application was filed on 7th December, 2020. This is a period of less than two weeks. In the case of **BUTT –V- RENT RESTRICTION TRIBUNAL [1982] KLR 417** the court stated the principles to be considered in such an application and states as follows:-

- “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.”

Having read the application and the supporting affidavit, I do find that the same was filed without unreasonable delay. The nature of the application is one that does not require the provision of security as it involves premises owned by the applicants. I do find that the application dated 7th December 2020 is merited and the same is granted as prayed. Costs shall follow the outcome of the appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY 2021.

.....

S. CHITEMBWE

JUDGE