



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 506 OF 2008**

**PAUL KARUGA NJUGUNA.....PLAINTIFF**

**- VERSUS -**

**HOUSING FINANCE COMPANY OF KENYA LIMITED.....1<sup>ST</sup> DEFENDANT**

**PENINAH NJERI HASSAN.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Judgment was delivered, in this matter, on 18<sup>th</sup> August 2016. By that judgment the court dismissed the plaintiff's case and ordered the plaintiff to be evicted from property **LR No DANGORETTI/RIRUTA/S/272**. That property is registered in 2<sup>nd</sup> defendant's name.
2. The plaintiff sought stay of execution of that judgment pending appeal. The court by the Ruling of 16<sup>th</sup> February 2017 granted the plaintiff conditional stay of execution. Stay was granted on condition the plaintiff does pays Ksh 50,000 rent on the 5<sup>th</sup> day of each month and in event of default execution to issue.
3. The 2<sup>nd</sup> defendant has moved this court by Notice of Motion application dated 11<sup>th</sup> March 2019. The 2<sup>nd</sup> defendant seeks by that application the eviction of the plaintiff. The 2<sup>nd</sup> defendant by her affidavit in support of the application alleges that the plaintiff is in arrears of rent by the amount of Ksh 450,000.00. That the plaintiff has continually failed to obey the conditions of stay of execution which is prejudicial to the 2<sup>nd</sup> defendant.
4. The plaintiff by his replying affidavit dated 26<sup>th</sup> April 2019 deponed that he had attended Equity Bank to deposit his rent into the bank account given by the 2<sup>nd</sup> defendant but was informed that the account was in the name of Dr. Adeyemi Frank Attere. This prompted his advocate to write to the 2<sup>nd</sup> defendant's advocate, by letter dated 9<sup>th</sup> April 2019, and informed the said advocate that the bank account supplied to the plaintiff did not belong to the 2<sup>nd</sup> defendant. Since that letter did not get a response his advocate wrote another letter dated 6<sup>th</sup> June 2019 making the same inquiry. The plaintiff gave that as the reason for failure to pay rent when due.
5. By a further affidavit of the plaintiff sworn on 25<sup>th</sup> July 2019 the plaintiff attached banking slip of the rent due which was deposited in the bank account given to him by the 2<sup>nd</sup> defendant, which he said he later found out it was a joint account of 2<sup>nd</sup> defendant and DR. Adeyemi Frank Attere. The plaintiff deponed that he was upto date with his rental payments.
6. Unfortunately there was no response from the 2<sup>nd</sup> defendant to the plaintiff's deposition that he was unable to deposit his rent into the bank account supplied by 2<sup>nd</sup> defendant because it was in another person's name nor was there response to the deposition that the plaintiff is upto date with his rental payments.
7. In the light of the above I am unable to determine whether the plaintiff was wilfully in default of the conditions for stay. Accordingly I am unable to accede to the 2<sup>nd</sup> defendant's application. Although I am unable to grant the prayers sought the 2<sup>nd</sup> defendant will not be barred to seek the plaintiff's eviction in case of any future default.

**CONCLUSION**

8. I grant the following orders:

a. The Notice of Motion dated 11<sup>th</sup> March 2019 for the reason set out above is disallowed. Leave is however granted to the 2<sup>nd</sup> defendant to file for the eviction of the plaintiff in case of future default of condition of stay.

b. There shall be no order as to costs to Notice of Motion dated 11<sup>th</sup> March 2019.

**DATED, SIGNED and DELIVERED at NAIROBI this 27<sup>th</sup> day of APRIL, 2020.**

**MARY KASANGO**

**JUDGE**

**ORDER**

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17<sup>th</sup> April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **27<sup>th</sup>** day of **April, 2020**.

**MARY KASANGO**

**JUDGE**