

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC. CASE NO. 129 OF 2017

RHZ ENTERPRISES LIMITED.....APPLICANT

VERSUS

ROSELINE OKEYO.....RESPONDENT

RULING

The Applicant seeks to extend the time for filing an appeal out of time against the judgement entered against it on 23/12/2016 through the application dated 23/6/2017. It also seeks to stay execution of the decree emanating from that judgement pending hearing and determination of the application and the intended appeal.

The Applicant argues that it has an arguable appeal with a likelihood of success and that it only became aware of the judgement on 9/2/2017 when the Respondent threatened to commence execution. The Applicant filed **Miscellaneous Application No. 75 of 2017** but omitted to seek leave for extension of time and had to withdraw that application and file the instant application.

It contends that it has met the requirements for the grant of stay and that it will suffer substantial loss if execution proceeds since the Respondent may be unable to refund the decretal sum if the intended appeal succeeds. The Applicant is willing to furnish security by way of a bank guarantee for the due performance of the decree. The Applicant annexed a copy of the board resolution and the draft memorandum of appeal. It did not attach a copy of the ruling appealed from or the decree to enable the court see that it has an arguable appeal.

The Respondent averred in her Replying Affidavit that the Applicant does not have an arguable appeal and that this application is a waste of judicial time. She deponed that she entered into a lease agreement with the Applicant and paid a deposit of Kshs. 70,000/= to the Applicant which was refundable at the determination of the tenancy. She claims she returned the premises to the Applicant in good and tenantable condition and that the Applicant has not shown evidence of damage to the premises as it alleges.

The Respondent also argued that there was inordinate delay of over six months in filing this application, and further, that the application is *res judicata* since the Applicant had previously filed a similar application which it withdrew. That application was not decided upon hence the instant application is not *res judicata*.

The court has considered the application, the reply and the submissions.

The Applicant did not give evidence of the repairs it carried out on the demised premises to demonstrate that it has an arguable appeal. There was inordinate delay in bringing this application. The Applicant has not shown sufficient cause for not filing the appeal in time.

The application dated 23/6/2017 is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 30th day of August 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Sinana holding brief for Mr. Achach for the Applicant

No appearance for the Respondent

Mr. V. Owuor- Court Assistant