



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL APPEAL NUMBER 383 OF 2015
HOTPOINT BAZAAR LIMITED. APPELLANT/APPLICANT
VERSUS
GEORGE MBUGUA. RESPONDENT

RULING

The Appellant/Landlord has moved the court by way of a Notice of Motion dated the 10th November, 2015. The same is expressed to be brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 50 Rule 8, Order 51 Rule 1 of the Civil Procedure Rules and Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) and all other enabling Laws.

The applicant has sought the following orders: -

1. Spent
2. That this Honourable court be pleased to enlarge time to enable the Appellant/Applicant file appeal out of time.
3. That this honourable court be pleased to issue any other/further orders as may be deemed fit.
4. That the costs of the application be provided for.

The Application is premised on the grounds set out on the body of the Application and on the annexed Affidavit of Jennifer Shamalla Advocate sworn on 10th November, 2015.

The summary of the Appellant/Applicant's case is that the Business Premises Rent Tribunal, in Tribunal Case Number 99 of 2014 delivered a ruling against the Appellant on the 10th July, 2015.

Following the said ruling, the Appellant moved to the High Court and obtained a stay of execution and enforcement of the said decision which orders were issued ex parte.

The Appellant applied for the proceedings to enable it file the Appeal but the same were supplied on the 12th day of August, 2015 by which time, the statutory period within which to appeal had expired.

It is for this reason that the Appellant seeks leave to file Appeal out of time. It is deponed that the Appellant's Appeal has high chances of success and unless the extension is granted, the Applicant is

likely to suffer irreparable and substantial loss as the Respondent is likely to deduct the amount from the monthly rent, occasioning loss of income to the applicant.

That the Respondent will not suffer any prejudice in the event that time is enlarged.

The application is not opposed. The Respondent did not file a replying affidavit or grounds of opposition to the Application and even when the same came up for hearing on the 2nd February, 2016, there was no representation on the part of the Respondent.

In her submissions, counsel for the Applicant told the court that it is seeking a stay of execution on costs awarded to the tenant of Ksh.20,000/- and that the Applicant be granted leave to appeal out of time. She submitted that the proceedings were received late and hence the delay in filing the appeal. She relied on Civil Appeal No. 22 of 2012 **Warungu Holdings Limited Vs Rashmi Patel T/C Post Global Services & 2 others** where the Judge in quoting the case **Mwangi Vs Kenya Airways Ltd [2003] KLR 486** observed that: -

“... as long as the discretion is exercised judicially, a judge would be perfectly entitled consider any other facts outside those listed so long as the factor is relevant to the issue being considered. To limit such issues only to the four set out in the paragraph would be to fetter the discretion of the judge.....”

Order 50 of the Civil Procedure Rules grant the court powers as follows: -

“..... to enlarge time upon such terms (if any). Such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”

In granting an application like this, the court will consider the following: -

- The reason for the delay.
- The chances of appeal succeeding
- The prejudice to the Applicant.

The court notes that the delay in filing the appeal was not occasioned by any fault on the part of the Appellant but it was due to the fact that the proceedings were supplied late.

In the premises, I will allow the application. The Appeal to be filed within 7 days from today.

There will be no order as to costs for the Respondent did not oppose the Application.

Dated, signed and delivered at Nairobi this 31st day of March, 2016.

.....

L NJUGUNA

JUDGE

In the presence of

..... ***for the appellant/applicant***

..... ***for the respondent.***