



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC APPEAL NO. E070 of 2021**

**ISMAEL O. OMOLLO.....APPELLANT/APPLICANT**

**VERSUS**

**WELCO SERVICES INTERNATIONAL.....DEFENDANT/ RESPONDENT**

**RULING**

1. Coming up for determination is an application dated 8<sup>th</sup> September 2021 (the Notice of Motion application is dated 8<sup>th</sup> September 2020 but this court will take it as a typographical error since prayers sought are making reference to an order dated 1<sup>st</sup> September 2021) by the Appellant/Applicant seeking the following orders:

*i. Spent*

*ii. THAT this Honourable court be pleased to stay the decision of the Rent Restriction tribunal pending the hearing and determination of this application interparties.*

*iii. THAT this Honourable court do stay the decision of the learned tribunal Chairman Hon. Hilary Korir issued on the 1<sup>st</sup> day of September 2021 pending the hearing and determination of this Appeal.*

*iv. THAT this Honourable tribunal be pleased to issue any other orders in their discretion (sic) to ensure the just and fair application of law to all parties.*

*v. THAT the cost be provided for by the Respondent.*

2. This application supported by the sworn affidavit of Ismael O. Omollo dated 8<sup>th</sup> September 2021 is premised on the grounds outlined on the application and in the affidavit that the Respondent was issued with orders dated 1<sup>st</sup> September 2021 by the Rent Restriction Tribunal despite restraining orders dated 30<sup>th</sup> June 2020 and contempt/enforcement orders dated 4<sup>th</sup> August 2020 being in force. Appellant also deponed that he would suffer irreparable damages if the impugned orders which were adverse and conclusive in nature despite the main cause being undetermined were not stayed.

3. He also deponed that the appeal had chances of success and if the orders were executed, then the said appeal would be rendered nugatory.

4. The Respondent in response to this application filed grounds of opposition dated 22<sup>nd</sup> October 2021 contending that this court lacks jurisdiction to determine disputes emanating from landlord/tenant relationship on appeal and that the Applicant had not complied with the conditional order in which he was to deposit Kshs. 700,200 in court.

5. This application was to be canvassed by way of written submissions but none of the parties complied with this directive as there are no submissions on the CTS.

**Analysis and determination**

6. This court having reviewed the application, affidavit and grounds of opposition finds that the issues for determination are:

*i. Whether this court has jurisdiction to determine a dispute emanating from landlord/tenant relationship on appeal;*

ii. Whether the application seeking to stay the decision of the Rent Restriction Tribunal dated 1<sup>st</sup> September 2021 is merited;

iii. Whether the application should be dismissed for want of compliance with court order dated 4<sup>th</sup> October 2021.

7. On the question of jurisdiction, I make reference to the case of Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd (1989) where the court stated that “*Jurisdiction is everything. Without it, a court has no power to make one more step. ...*” .

8. The broad jurisdiction of the Environment and Land Court is donated by **Article 162(2)** of the **Constitution of Kenya** which provides that: *Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- (b) the environment and the use and occupation of, and title to, land...*

9. **Section 13(2)** of the **Environment and Land Court Act** outlines the disputes which this court has powers to hear and determine, and **subsection 4** further confers this court *with the appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.*

10. In the instant application, the Applicant has moved this court for stay of the Rent Restriction Tribunal’s order dated 1<sup>st</sup> September 2021 pending the appeal dated 8<sup>th</sup> September 2021 in the Memorandum of Appeal.

11. **Section 4** of the **Rent Restriction Act** establishes the Tribunal, while **Section 8** provides:

*(1) Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.*

*(2) An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases*

*(a) in the case of an order under subsection (5) of section 6; or*

*(b) on any point of law; or*

*(c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law,*

*and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact...*

12. The said appeal is on grounds inter alia that the Chairman erred in law and fact by allowing Respondent’s application dated February 2021 over the ones filed earlier; that the chairman erred in law and fact by giving final orders without hearing the main suit... and seeks that *permanent injunction restraining the landlord, agent or person acting on their behalf from evicting, levying for distress and or dealing with the house pending the hearing and determination of the case.*

13. The impugned order dated 1<sup>st</sup> September 2021 annexed in this application states:

**“IT IS HEREBY ORDERED:**

**1. THAT the application is hereby certified urgent.**

**2. THAT the Defendant/ Respondent is hereby granted leave to levy distress in order to recover the outstanding arrears of Kshs. 722, 500/- as at 30/8/2021.**

**3. THAT the Plaintiff/ Tenant is hereby ordered to deliver vacant possession within the next five days from the date hereof.**

**4. THAT in default, eviction is to be enforced through a Court Bailiff with the assistance of the OCS Embakasi Police Station.**

**5. THAT the typed proceedings to issue to the plaintiff/tenant’s counsel subject to payment of the requisite charges.**

**6. THAT the Plaintiff/Tenant is to bear costs of the application.’**

14. The issues arising herein are certainly a mixed grill of facts and law, hence this court has jurisdiction to hear the matter.

15. I now come to the question of stay of the tribunal order of 1.9.2021. I make reference to the Court of Appeal case of Butt v Rent Restriction Tribunal [1979] eKLR where it was held that:

*“... It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory”*

16. When this matter came up before me for the first time on 4.10.2021, the counsel for the Respondent indicated that the tenant (read Applicant) had moved out of the premises and this issue was confirmed by the counsel for the Applicant. This means that the orders of 1.9.2021 are spent save the issue of the Ksh.722,500, the same being rent arrears.

17. On 4<sup>th</sup> October 2021 this court gave directions that:

*“ The goods retained in the premises of the auctioneers are not to be sold on condition that the Applicant deposits the amount of Kshs. 700,220 in court within the next 14 days.*

18. Order 26, rule 1 Civil Procedure Rules, 2010 on the issue of Security for costs provides that:

*“ In any suit the court may order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party” .*

19. There is no evidence of compliance or reasons for non-compliance with the aforementioned order. It follows that the Application (which now only relates to issue of rent arrears) is not merited, the same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Mr. Mutungi holding brief for Kihanga for Respondent

Court Assistant: Eddel Barasa