



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CIVIL MISC APPLICATION NO. 2 OF 2016

TIMOTHY BUNDI STEPHEN PROSECUTOR

versus

G. G. GITHUI RESPONDENT

RULING

1. The applicant **TIMOTHY BUNDI STEPHEN** is a tenant at the premises of G. G. Githui the respondent. The respondent gave notice to the applicant under the Business Premises Rent Tribunal (BPRT) Act for vacant possession due to default in rent payments. The applicant filed a Reference before BPRT against the respondent's notice on 15th December 2015, being Tribunal Case No. 113 of 2015.
2. That reference was fixed for hearing before the Tribunal on 1st April 2016. The order of the Tribunal of that date shows that the applicant was absent while the respondent was present. The applicant's Reference was dismissed and the respondent's notice for vacant possession was allowed.
3. The applicant filed an appeal before this court being Nanyuki High Court Civil Appeal No. 2 of 2016. In the memorandum of appeal in that appeal the applicant faults the learned chairman of BPRT for condemning him unheard; for ordering the applicant to vacate the rented premises; and for ordering the applicant to pay rent arrears.
4. The applicant is before this court by way of a Notice of Motion application dated 26th April 2016 seeking stay of the order of BPRT of 1st April 2016 pending the hearing of his aforesaid appeal.
5. I have considered the applicant's and the respondent's affidavits filed in this matter. The respondent is indeed correct to state in his affidavit that the applicant approached this court prematurely. The applicant was absent from the BPRT when the order dismissing his reference was made and the landlord's notice was given effect, that is that the applicant do vacate the rented premises and do pay the rent arrears. That being so there is no evidence before this court that the applicant was denied a hearing by the BPRT. The applicant ought to have approached the BPRT with an application of either review or setting aside the order of 1st April 2016. It is on the Tribunal entertaining such an application that applicant or respondent can file an appeal before this court. An order of either a court or a Tribunal is only subject to an appeal if the matter has been heard on merit. An appealable decision is where a court or Tribunal has determined a matter after considering the fact and the law. This was not the case in respect to the BPRT order of 1st April 2016. That order simply dismissed the applicant's Reference because the applicant was absent on the day of hearing. The BPRT did not in reaching that determination consider any facts or the law pleaded by the parties before it. It simply gave effect to the notice to vacate issued by the respondent to the applicant because the applicant was absent on the day of the hearing and did not therefore advance any argument in favour of his Reference. It follows that there is no basis of granting a stay of execution

when indeed there is no meritorious appeal pending.

6. In my view this is a case where of necessity the court should consider the aim of the overriding objective of the **Civil Procedure Act** under **Section 1B** of that Act. That section requires the courts to handle the matters before them for the purpose of attaining various aims amongst them being:-

“The timely disposal of the proceedings, and all other proceedings in court, at a cost affordable by the respective parties.”

With that aim in mind and having found there is no merit in the applicants appeal on which the Notice of Motion application is premised the court will proceed to dismiss the application and strike out the appeal to ensure parties are not subjected to further legal costs and to ensure that there is expeditious and affordable resolution of this dispute.

7.The following are the orders of this court:-

(a) The Nanyuki Civil Appeal No. 2 of 2016 is hereby struck out with no order as to costs. A copy of this ruling shall be placed in that appeal file.

(b) The Notice of Motion dated 26th April 2016 is hereby dismissed with costs to the respondent.

DATED AND DELIVERED THIS 24TH DAY OF NOVEMBER 2016

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant:

Applicant:

Respondent:

For Applicant:

For Respondent:

COURT

Ruling read in open court.

MARY KASANGO

JUDGE