



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. 12 OF 2015**

**LINET ADHIAMBO .....APPELLANT**

**VERSUS**

**PHOEBE AGIK ..... RESPONDENT**

**RULING**

By the Notice of Motion dated 18th February, 2015 filed herein on 26th February, 2015 the Applicant ( **Linet Adhiambo**) sought orders that the orders of the **Business Premises Rent Tribunal** dated **2nd February, 2015** and all consequential orders thereto be set aside and /or varied and that this court be pleased to make an order that the rents be deposited in Court.

The application is premised on grounds that she did not attend the hearing giving rise to the orders as she was never served with a hearing Notice and only became aware of the orders on 4th February, 2015; that she has a good defence to the case and that the Respondent may proceed to levy distress and forcefully evict her at any time. Further that no prejudice will be suffered by the respondent if the orders sought are granted and that justice demands that both sides be heard before a final determination is made and that the hearing was premature as the Trial Directions and conferences had not been given.

In her replying affidavit the Respondent deposes that the hearing date was given in Court in the presence of both parties; that the applicant owes her rent for the years **2011, 2012, 2013, 2014 and January and February 2015**; that the tenants statement of account was rejected by the tribunal and an order made that she should pay the arrears and that subsequently the orders sought to be set aside were granted.

The court heard the arguments of the parties who were both unrepresented on **9th March, 2015** and reserved its ruling pending the Tribunal furnishing us with a copy of the proceedings. To date it has not done that despite various reminders and I have had to write this ruling without the same.

Simply put the applicant`s application is one for stay of execution pending appeal. She has already filed a Memorandum of appeal and has in her application indicated that she is dissatisfied with the decision of the tribunal. It is understandable that her application would be poorly drafted given that she is unrepresented.

Order 42(6) 2 provides that no order for stay of execution shall be made unless the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application is made without unreasonable delay. Further the applicant must give the security of costs ordered for the due performance of the decree before the court can grant the order.

This court can only vary and/or set side the orders of the Tribunal upon hearing both parties at the appeal and for this court to stay the orders pending hearing of the appeal the applicant must satisfy the two conditions set out above. In my view she has not demonstrated that she stands to suffer substantial loss should the stay be refused and the appeal is allowed. Without the proceedings of the Tribunal it is difficult to tell whether or not she was present when the hearing date was fixed by the court. It is also difficult to determine what advised the decision of the tribunal. It is however, noteworthy that the applicant does not dispute that she is in arrears. Indeed from the documents she has furnished to this court it is her own reference that was dismissed. This court finds no merit in this application and proceeds to dismiss it with costs to the Respondent. It is so ordered.

**E.N. MAINA**

**JUDGE**

**Signed, dated and delivered in open court this 22nd day of April, 2015 at 2.30 p.m**

**In the presence of:**

Applicant in person

Respondent in person

Moses Okumu-Court Intepreter

ENM/aar