



**REPUBLIC OF KENYA**

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

**HCCA NO. 41 OF 2015**

**ONESMUS ODARI ..... APPELLANT**

**VERSUS**

**MILDRED ACHIENG ..... RESPONDENT**

(Being an appeal from the Judgment of Mr. Mboroki Chairman Business Premises Rent

Tribunal delivered on 28th November 2014 in the Original Kisumu BPRT No. 82 of 2012)

**RULING**

By the Notice of Motion dated 25th May 2015 the applicant seeks leave to enlarge the time for filing this appeal, that the appeal be deemed filed within time and that the costs of the application be provided for. Prayer (b) of the application which sought a temporary stay of execution of the judgment in the Kisumu Business Premises Rent Tribunal No.82 of 2012 pending hearing and determination of this application will be spent upon the delivery of this ruling.

The gist of the application is that the applicant was unaware of delivery of the judgment which was delivered on 28th November 2014 until 13th May 2015 when his Advocate received a letter from the respondent's Advocate and being dissatisfied with the judgment and the time for lodging the appeal having lapsed it is only fair and just that time be enlarged. He deposes that he did not receive notice of the delivery of the judgment and that this application has been brought without delay. Further that he has an arguable appeal with high chances of success and that he is likely to suffer substantial loss if execution succeeds as he shall be evicted from the leased property in which he has invested heavily.

The application is vehemently opposed and the Respondent has filed a replying affidavit sworn on 15th June 2015.

The Learned Advocates for the parties canvassed their arguments before me on 13th July 2015. Section 15(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act provides that any party to a reference aggrieved by the decision of the Tribunal may appeal to the High Court within 30 days. The same section however gives this Court powers to enlarge or extend the period limited for appeal where it is satisfied that there is sufficient reason for so doing. That power is therefore discretionary. However, as always, that discretion must be exercised judicially. In this case the applicant alleges that the judgment was delivered without notice to him and that he became aware of it long after the time limited for appeal had expired. I have however come across correspondences (e-mails) exchanged between his Advocate and that Advocate for the Respondent that seems to suggest otherwise. The e-mails are exhibited at pages 13 and 14 of the respondent's replying affidavit and the same show that the judgment was brought to the attention of his Advocate as early as 16th March 2015. Paragraph 10 of the replying affidavit has not been rebutted and is confirmed by the said e-mails. The applicant is therefore being less than candid and has not explained the delay between 16th March 2015 to 25th May 2015 when he filed this application. He is guilty of laches and as equity does not aid the indolent his application is dismissed with costs to the respondent. It is so ordered.

**Signed, dated and delivered this 30<sup>th</sup> day of July 2015**

**E. N. MAINA**

**JUDGE**

In the presence of:-

Mr. Abande for the Appellant

N/A for the Respondent

CC: Moses Okumu