



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS,
CIVIL APPEAL NO. 384 OF 2013

YOGI SUPPLIES LTDAPPELLANT

VERSUS

KENYA TEXTILE MILLS LTD.....RESPONDENT

RULING

The appellant/applicant has filed a notice of motion dated 10th July 2013 under section 1A, 1B and 3A of the Civil Procedure Act, order 42 Rule 6 of the Civil Procedure Rules 2010 and all other enabling provisions of Law, seeking the following orders;

1. Spent.
2. That there be a stay of execution of the judgment and decree/order of the Business Rent Tribunal delivered on 12th June 2013 pending the hearing and determination of this application.
3. That there be a stay of execution of the judgment and decree/order of the Business Premises Rent Tribunal delivered on 12th June 2013 in NRB BPRT NO 969 OF 2012 pending the hearing and determination of the appeal filed herein.
4. That the costs of this application be in the cause.

The application is based on the following grounds.

- a. The appellant is aggrieved by the said judgment and has lodged an appeal against the same.
- b. The judgment and decree of the honorable tribunal has rendered the appellant as being in arrears for a sum of Kshs.1,963,640/- for which the respondent may levy distress for rent at any time thus occasioning irreparable harm on the appellant.
- c. The appellant is ready and willing to abide by such terms as may be ordered by this Honorable court.
- d. The appellant has an arguable appeal with a high probability of success.
- e. This application has been made without unreasonable delay.
- f. It is in the interests of justice that the orders sought are granted.

The application is supported by the affidavit of Shamik Patel a director of the plaintiff company. He deposes as follows; that the respondent issued the appellant with a notice to alter the terms of a tenancy dated 15/10/2012. The appellant duly notified the respondent that it did not agree to comply with the said notice. That the appellant then filed a reference to the Business Premises Rent Tribunal at Nairobi being BPRT No. 969 of 2012. That both the appellant and the respondent filed valuation reports. The appellant's valuation report recommended a sum of Kshs. 201,240/- per month as rent while the respondent's report

recommended a sum of Kshs.575,554/- per month as rent. That on 12/06/2013 the honorable tribunal delivered its judgment when it assessed the rent payable on the rental premises as kshs.345,840/- per month which was a phenomenal increase from the amount of kshs.122,000/- currently being paid by the appellant. That he is aware that the appellant's valuation report noted that the rental premises being L.R No. 209/6338 was old, dilapidated and in dire need of repair. That he believes that the Honorable Tribunal ignored and/or failed to take this pertinent fact into account when delivering its judgment herein. That the Honorable Tribunal further backdated the effective date of the new rent to the date of the notice to alter the terms of the tenancy being 15/10/2012. This in effect has left the appellant with rent arrears for a sum of Kshs. 1,963,640/- for which the respondent may levy distress for rent at any time thus occasioning irreparable harm on the appellant by crippling its business operations. That the appellant being aggrieved by the entire judgment has filed the present appeal. That the appeal has high chances of success. If the orders sought in this application are not granted, the respondent stands to suffer irreparable harm.

The respondent though served did not attend the inter partes hearing neither did their counsel file any response despite being given time to do so.

I have read and considered the affidavit filed by the applicant, it is aggrieved by the tribunal orders. I also note that Justice Waweru gave a ruling on interim relief. I note that the applicant filed the application a month after the tribunal gave its orders. There was no delay in filing the application. I am guided by the provisions of order 42 rules 6 of the Civil Procedure Rules. The applicant fears that the respondent may levy distress on the amount of Kshs.1,963,640/- which amount includes the new rent back dated to 15/10/12. I have read the interim ruling by Justice Waweru, he considered the issues between the parties and gave a considered ruling which I feel I should not depart from. I therefore confirm the orders in the ruling on interim relief dated 8th August 2013 given by Justice Waweru on the 7th of August 2013 that;

- i. That the appellant shall pay Kshs.553,000/00 (towards the arrears of rent of Kshs. 1,566,880/00) by four (4) equal monthly installments w. i.e. 15th August 2013.
- ii. That the appellant shall deposit in court the balance of the arrears in the sum of Kshs.1,013,880/00 by six (6) equal monthly installments w. i.e. 15th August 2013.
- iii. The appellant shall continue to pay the current monthly rent of Kshs.102,344/00 (for the two go-downs it has retained) as and when it falls due.
- iv. That in default of any payment as set out above the stay of execution shall automatically lapse.
- v. The applicant to ensure that the appeal is heard within the year 2014. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 31st day of January 2014.

R. E OUGO

JUDGE

In the presence of;

.....**APPELLANT/ APPLICANT**

.....**RESPONDENT**

.....**COURT CLERK**