



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Civil Appeal 185 of 2012**

**JOSPCHAT MWANGI.....APPELLANT**  
**VERSUS**  
**BARINGO PROGRESSIVE CO. LTD.....RESPONDENT**

**RULING**

This notice of motion dated 31/10/2012 is brought by Josphat Mwangi, the appellant/applicant. He seeks a stay of execution of the judgment of the Business Premises Tribunal in **Nakuru BPRT 74/11, Josphat Mwangi v Baringo Progressive Co. Ltd.** The grounds upon which the application is brought are that the appellant is a tenant of the respondent, paying rent of Kshs.9,000/- per month; that on 27/9/2011, the respondent served the applicant with a notice to increase rent from Kshs.9,000/- to Kshs.34,500/- per month. The applicant filed a reference at the Business Premises Tribunal and the Tribunal rendered its judgment on 19/9/2012. The applicant is opposed to the new rent as being punitive but the respondent intends to recover the rent with effect from 1/4/2012, it is the applicants contention that if the court does not intervene, he will suffer substantial loss. The applicant is apprehensive because the decree of the Tribunal has already been extracted for purposes of enforcement.

Stanley Kipkoech Chemng'orem, the respondent's manager filed an affidavit in reply, opposing the application. He deponed that the applicant has been in the suit premises since 2001; that other tenants have paid the new rent save for the applicant; that the parties availed their respective valuation reports to the Tribunal which were prepared by experts, from which the Tribunal made its findings and there is no evidence that the respondent intends to execute.

For this court to exercise its discretion under **Order 42 Rule 6** of the **Civil Procedure Rules**, the applicant has to demonstrate that:-

- (1) That he has come to court without undue delay;**
- (2) That he will suffer substantial loss if an order of stay is not granted;**
- (3) That he is ready and willing to provide security for due performance of the decree.**

The Business Premises Tribunal rendered its judgment on 19/9/2012 as evidenced by the copy of the judgment exhibited. This application was filed on 31/10/2012, about 1½ months later. Though the 1½ months delay is not explained, the period cannot be said to be inordinate.

The applicant used to pay rent of Kshs.9,000/- per month. The increment is more than three times and I find the increment to be quite substantial. The applicant contends that the amount is punitive and that if he has to pay that sum, it will affect his business substantially and he may be forced out of business. He is however, willing to continue paying the old rent or pay a reasonable figure. It is not disclosed what business the applicant does and how it would be so drastically affected if he were to pay the new

rents. However, it is obvious that the increment in the rent is quite substantial and it would have an impact on any business. I am satisfied that an order of stay is merited and it will be granted on condition that the applicant deposits with the court a sum of Kshs.300,000/- as security, within seven (7) days hereof and to continue paying the respondent the old rents pending the hearing and determination of this appeal. If the respondent declines to accept the old rents, the same be deposited with the court every last day of the month till this appeal is heard and determined. Costs will abide the appeal.

**DATED and DELIVERED this 28<sup>th</sup> day of March, 2013.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Mr. Kariuki holding brief for Mr. Waiganjo for the appellant

Ms Kahunga holding brief for Mr. Simiyu for the respondent

Kennedy – Court Clerk