

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 163 OF 2012

HEADS U WIN.....APPELLANT

VERSUS

RAM DEVELOPMENT LTD.....RESPONDENT

RULING

By a notice of motion dated 19th September, 2012 the applicant herein sought the following orders:

“3. That pending the hearing and determination of the appeal filed herein there be a stay of execution of the judgment delivered herein on 21st August, 2012.”

The application was supported by the affidavit of **NAOMI WARUI** sworn on 19th September, 2012. The respondent by way of a replying affidavit sworn on 31st October, 2012 opposed the application. It was agreed that the application be disposed of by way of written submissions. Both parties duly filed their written submissions.

Briefly the facts are that the applicant is a tenant of the respondent in respect of business premises on plot No. MN/1/3414-17 situated at Nyalii. At all material times the monthly rent for that premises has been Kshs. 20,936/=. In April, 2012 the respondent issued a notice to the applicant seeking to increase the monthly rent due on the premises to Kshs. 51,000/=. The applicant objected to this and filed a reference before the Business Premises Rent Tribunal sitting in Mombasa. By a judgment dated 21st August, 2012 the chairperson of the Business Premises Rent Tribunal set the new rent at Kshs. 32,840/=. The applicant has appealed that decision, pending the hearing and determination of said appeal the applicant seeks a stay of the implementation of the decision of the Business Premises Rent Tribunal.

I have perused and carefully considered the written submissions filed by each party as well as the authorities cited therein. To my mind there exist two competing interests here. The respondent has the right to enjoy the fruits of the judgment rendered in its favour by the Business Premises Rent Tribunal. On the other hand the court is mindful of the right of the applicant to have her appeal adjudicated upon without being rendered nugatory. This court must balance these two rights and avoid prejudicing either party. As such I do grant a stay in terms of prayer (2) of the notice of motion dated 19th September, 2012.

SUBJECT to the applicant depositing in court the sum of Kshs. 300,000/= (Three Hundred Thousand only) within 21 days of today’s date as security. Failure to deposit this sum as directed will render the application dismissed.

Costs for this application to be met by the applicant. It is so ordered.

Dated and delivered in Mombasa this 23rd day of August, 2013.

M. ODERO

JUDGE

In the presence of:

No appearance by either party

Court Clerk Mutisya