



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL APPEAL NO. 18 OF 2013**

**MOHAMED SALIM BASHIR ..... APPELLANT**

**V E R S U S**

**SHAMI TRADING CO. LIMITED ..... RESPONDENT**

**RULING**

1. The Appellant filed a Memorandum of Appeal in this matter appealing against the decision of the Chair of the Business Premises Rent Tribunal (BPRT) in case No. 131 of 2012. That decision was made by the Chair on 14th September 2012. The Appellant filed his Memorandum of Appeal on 25th February 2013.
2. The Appellant is now before this Court with a Notice of Motion dated 25th February 2013 urging the Court to grant him stay of execution of the orders of BPRT pending the hearing and determination of this appeal. The Appellant and the Respondent filed their written submissions in respect to that Notice of Motion.
3. There is only one objection raised by the Respondent that I intend to deal with in this Ruling. The Respondent objects to the prayers sought in that Notice of Motion on the basis that there is no competent appeal before this Court. The Respondent submitted that the Appellant filed this appeal in contravention of Section 15 of The Landlord and Tenant (Shops, Hotels and Catering Establishment) Act Cap 301. That Section provides as follows-

***“(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the High Court:***

***Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.”***

4. The BPRT's decision which is challenged by this appeal was issued on 14th September 2012. The thirty days period provided under the above Section ran out on 15th October 2012. The Appellant as stated before filed his Memorandum of Appeal on 25th February 2013 without the leave of this Court. It therefore follows that indeed what is filed by the Appellant is incompetent and cannot be regarded as an appeal as provided under Section 15. It therefore follows that the Notice of Motion dated 25th February 2013 having been premised on a non-existing appeal must fail. Similarly, this appeal shall also be struck out for the same reason.

5. I grant the following orders-

- a. **The Notice of Motion dated 25th February 2013 together with this appeal are hereby struck out with costs to the Respondent.**
- b. **Any stay of execution granted hereof is hereby vacated.**

**Dated and delivered at Mombasa this 20<sup>th</sup> day of September, 2013.**

**MARY KASANGO**

**JUDGE**