



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

**AT MOMBASA**

**CIVIL APPEAL NO. 32 OF 2013**

RAMADHAN MOHAMED ALI  
.....APPELLANT

VERSUS.

HASHIM SALIM GHAIM .....  
RESPONDENT

**RULING**

By way of a Notice of Motion application dated the 13th day of February, 2013 and which is expressed to be brought under order 42 rule 6 of the Civil Procedure Rules 2010 and Section 1A, 1B and 3A of the Civil Procedure Rules the applicant seeks a stay of execution of the Judgment delivered on 15th February, 2013 by the Business Premises Rent Tribunal reference No. 222 of 2012 pending the hearing and determination of the appeal filed herein.

The grounds are that the appellant has filed an appeal against the Judgment delivered on 15th February, 2013 by the Business Premises Rent Tribunal and that he earns his livelihood from the said business operated on the suit property and if evicted from the premises he shall lose substantially.

Secondly that the appeal has strong ground if the prayers are not granted the appeal would be rendered nugatory and he would suffer substantial loss.

In his replying affidavit the Respondent depones that the appeal does not have high chances of success. The appellant operates a garage business in an open air premises which business can easily be relocated. That he stands to lose massively in terms of price escalation of construction materials. His counsel submits that it has not been disclosed what prejudice the appellant would suffer if the application is not granted.

Further that the Respondent intends to construct a building at the premises.

The appellant has not shown that he would suffer any substantial loss. He has not provided for any security to entitle him to any unconditional stay of execution.

It is submitted that a security be provided by the appellant and deposited in Court in the sum of Ksh. 2 million to be held in a joint interest earning account of both counsel for the Advocates within a specified period and or time frame be given with which to prosecute the appeal.

Counsel has cited the authority of **High Court Appeal No. 39A of 2011 Kenya Credit Traders – Vs-**

Mutiira M'Rintari Mbui why stay was denied on the basis that no substantial loss had been shown to accrue if the application for stay was not granted.

The authority of HCC 269 of 2008 Mrs Nahyer Shariff Alwi – Vs- Housing Finance Company(k) Ltd. & Others,

**“Where it was held that the fact that a policy will suffer substantial loss is not guarantee that the applicant would be granted the order for stay”.**

It is submitted for the appellant that there is a dispute as to who is the landlord as the Respondent is not the registered owner.

Secondly, that the appellant has been operating business in the said premises for the last thirty years. Counsel for the appellant relies on the authority of M.M. Butt –Vs- Rent Restriction Tribunal Civil Application No. 6 of 1979 wherein the Court of Appeal held that,

**“To avoid an appeal from being rendered nugatory, a stay of execution ought to be granted pending the outcome of the appeal”.**

I have gone through this application anxiously and I come to the conclusion that the appellant has been a tenant in the suit premises for a period of thirty (30) years and if this application is not granted the appeal if successful would be rendered nugatory.

Therefore pending determination of the appeal I grant the stay prayed but upon the condition that the appellant to deposit as security Ksh. 300,000/= in an interest earning account in the joint names of both counsels within thirty (30) days from today and to cause the appeal to be fixed for hearing within fourteen (14) days from today failing which the stay will lapse without further orders of the Court.

Ruling delivered dated signed this **14th** day of **November, 2013.**

.....

**M. MUYA**

**JUDGE**

**14TH NOVEMBER, 2013**

**In the presence of:-**

Learned Counsel Omwenga for Counsel Respondent

Oloo holding brief Gikandi for Appellant