



## Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Tribunal case*

### BUSINESS PREMISES RENT TRIBUNAL

-

- 3.1 *Landlord issues notice to terminate or alter terms of tenancy 27<sup>th</sup> May 2004.*
- 3.2 *Tenant fails to file a reference to the Tribunal For purpose of hearing.*
- 3.3 *Landlord executes termination orders in the Magistrate's courts RMCC 12611/04.*
- 3.4 *Hon. Magistrate grants orders summary Judgment for eviction of the appellant/tenant (15<sup>th</sup> November 2005)*

- 3.5 *Appellant/tenant filed appeal on 18<sup>th</sup> November 2005.*
- 3.6 *Visram J on 28<sup>th</sup> February 2007 dismisses application for stay of execution on grounds tenant failed to file a reference to the tribunal.*
- 3.7 *Tenant appeals to the Court of Appeal.*
- 3.8 *Notice of motion application dismissed by Court of Appeal for CA 47/07*  
*Stay of execution Tunoi, Okubasu, Githinji JJA*  
*30<sup>th</sup> March 2007.*
- 3.9 *Application to court of Appeal for stay of injunction against respondent pending hearing of appeal of Visram J.*
- 3.10 *Application CA 47/07 dismissed by Omolo, Waki, Otieno JJA 11<sup>th</sup> June 2010.*
- 3.11 *Appeal admitted to hearing 29<sup>th</sup> July 2009*  
*Okwengu J*
- 3.12 *No further action taken.*

4. *Application*

*16<sup>th</sup> February 2012*

- i) *Leave to have subordinate court file returned*

*to the subordinate court for purposes of  
of execution.*

5. *Held:*

*Appeal to be heard.*

*Order 42 r 13(c) Civil Procedure Rules requires*

*File to be at the High Court.*

6. *Case Law:*

-

7. *Advocates :*

- i) *P Nyaosi instructed by M/s Mohammed Muigai & Co Advocates for  
appellant/tenant*
- ii) *O. J Mituga instructed by Singh Gitau & Co Advocates for  
respondent/landlord*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Appeal 914 of 2005**

**DAVID THIONGO T/A**

**WELCOME GENERAL STORES ..... APPELLANT/TENANT**

**VERSUS**

-  
-  
**RULING**

-  
-  
-  
I. **INTRODUCTION**

1. This matter has been in the court corridors since 2004.
2. It emanated from the Business Premises Rent Tribunal, whereby the landlord/respondent had filed a notice to terminate or alter the terms of tenancy on 27<sup>th</sup> May 2004. The tenant failed to file a reference to the tribunal for purpose of hearing.
3. The landlord exercised his rights and filed execution proceedings to terminate the orders in the magistrate's courts RMCC 12611/04.
4. The Hon. Magistrate granted orders of summary judgment for eviction of the appellant/tenant (15<sup>th</sup> November 2005).
5. Being aggrieved, the tenant appealed to this High Court and filed an application 18<sup>th</sup> November 2008 seeking orders of stay of execution.
6. The Hon. Judge, on 28<sup>th</sup> February 2007 dismissed the application on grounds that the tenant failed to file a reference to the tribunal of his appeal was not there.
7. The tenant appealed to the Court of Appeal against the refusal to issue stay of execution orders by Visram J on 28<sup>th</sup> February 2007. The said Court of Appeal in Nairobi Civil application case 47/07 dismissed the application on 30<sup>th</sup> March 2007.
8. The appellant returned to the Court of Appeal within a second application seeking orders of injunction. The said application was dismissed by the Court of Appeal (CA 74/07) Omolo, Waki, Onyango Otieno JJA on 11<sup>th</sup> June 2010.
9. In the meantime, the appeal in the High Court was admitted to hearing on 29<sup>th</sup> July 2009 (Okwengu J) but had never been prosecuted. No further action on this file had been taken.

II **APPLICATION 16<sup>TH</sup> FEBRUARY 2012**

10. The respondent/landlord by application of 16<sup>th</sup> February 2012 asked for the file to be returned to the subordinate court to proceed with the execution of a summary judgment having been entered. There is no stay of execution. This can only mean that there is nothing left in this matter.

11. In the alternative the court should issue orders of eviction.

III **OPINION**

12. The court herein has no mandate to issue orders of eviction, in the alternative. This is because the orders must be obtained from the hearing of the cause or appeal. The effect of there being no stay is to

render the appeal nugatory.

13. The right to be heard no matter how hopeless, one would conclude a person's case may be, is paramount.

14. This appeal has not been heard on grounds of parties being in and out of the Court of Appeal.

15. I would in the interest of justice order that the parties set this appeal for hearing at the most earliest and convenient time.

16. That the lower court file is required herein under Order 42 4 134 (c) Civil Procedure Rules as part of the appeal hearing.

17. The application herein is declined.

DATED THIS 23<sup>RD</sup> DAY OF MARCH 2012 AT NAIROBI

**M.A. ANG'AWA**

**JUDGE**

*Advocates* :

i) *P Nyaosi instructed by M/s Mohammed Muigai & Co Advocates for  
appellant/tenant*

ii) *O. J Mituga instructed by Singh Gitau & Co Advocates for  
respondent/landlord*