



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL 41 OF 2012

STANSLIOUS KARIUKI KINUGA

T/A THE CANDYMAN SHOP..... APPELLANT/TENANT

VERSUS

THE REGISTERED TRUSTEES OF ARYA PRATINDHI

SABHA EAST AFRICA RESPONDENT/ LANDLORD

(Being an appeal arising from the Ruling of Hon. D. Mochache Chairperson of Business Premises Rent Tribunal in Case No. 661 of 2008 dated 25th February 2010 at Nairobi)

RULING

I. INTRODUCTION

1. Stanlous Kariuki Kinuga t/a The Candyman Shop, occupies business premises LR 209/1293 Vedic House Kaunda Street, Nairobi. His tenancy agreement expired and the landlord declined to accept rent.
2. Reference was filed to the Business Premises Rent Tribunal in which the Hon. Chairperson is said to have made a ruling on the 25th February 2010, that the tribunal had no jurisdiction to entertain the said reference.
3. The relationship between the parties is said to be that of licensee.
4. The applicant took no action until the 19th October 2010, when he applied to this High Court in a

Misc application 493/10 seeking leave to appeal against the decision of the tribunal out of time. The High Court (Nambuye J) upon hearing the parties granted the said application on the 20th December 2011. To safeguard the interest of the applicant, the court granted further orders, that there be 45 days in which a stay of execution be granted. The appellant was not to be evicted from the premises.

5. The applicant alleged tenant filed an appeal HCCA 41/12 on the 15th February 2012 together with an application seeking orders of injunction pending appeal.

6. It is this application of 15th February 2012 that is the subject of this application.

II APPLICATION 15TH FEBRUARY 2012

7. The applicant stated that he prays for an injunction:-

“restraining the respondents whether by themselves or their agents from evicting, intimidating, harassing and or in any manner interfering with the appellant’s quite possession and enjoyment of the shop in the arcade on the ground floor of LR 209/1293 Vedic House, Kaunda Street, Nairobi until the final determination and disposal of the appeal herein.”

8. The applicant prayed that the rents be deposited to court if not accepted by the landlord.

9. This application was opposed on grounds based on a Preliminary Objection raised, namely that the appeal had been filed out of time.

10. The threshold of the principles under

Giella – Vs – Cassman Brown & Co Ltd(1973) EA 358 had not been met.

11. The respondents prayed the application be refused.

III FINDINGS

12. There has been a previous court who issued a temporary order of stay for 45 days. This has now expired. The applicant prays injunction orders to issue so that he may be heard on appeal.

13. The issue raised by the respondents is that of jurisdiction. Was this appeal filed in time? This would normally be undertaken at the stage of directions under Order 42 r 13(2) Civil Procedure rules.

14. The application be and is otherwise allowed. There will be injunction orders issued pending the hearing of this appeal.

15. As to the issue of rent, it would be best described as mense profits pending the hearing of this appeal. This be paid to the respondents failure to their accepting the mense profits, then the same be deposited to court within 30 days of 1st April 2012.

16. I award orders of costs to be in the appeal.

DATED THIS 23RD DAY OF MARCH 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

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Advocates :

i) *D Mosota instructed by M/s Ahmednassir Abdukadir
& Co Advocates for appellant/ tenant*

respondent/landlord ii) *D M Wambua instructed by B. Mbai & Co Advocates for*