



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL APPEAL NO. 657 OF 2011**

**BENEDICT KILONZO MWENGA ..... APPELLANT/ TENANT**

**VERSUS**

**PETER MUNUVE MWANGANGI**

**PAULINA NGUMI MWANGANGI ..... RESPONDENTS/LANDLORD**

*(Being an appeal arising from the judgment of Hon. D Mochache – Chairperson Business Premises Rent Tribunal inl Case No. 881 of 2010 dated*

*25<sup>th</sup> November 2011 at Nairobi)*

**RULING**

Application for Stay Of Execution

Dated 20<sup>th</sup> December 2011

**INTRODUCTION**

1. The applicant original tenant and appellant herein was served with a notice to terminate his tenancy, due to non-payment of rent. The matter was heard as a reference at the Business Premises Rent Tribunal, the tenancy being controlled and therefore the tenants has protection of the said tribunal.
2. In the judgment of the tribunal dated 25<sup>th</sup> November 2011, the tribunal held that the tenant was indeed in arrears of payment of rent  
(Ksh. 595,000/-) and that the tenant must therefore vacate the premises as of 1<sup>st</sup> January 2012.
3. The landlord proceeded to write a letter to the tenant dated  
2<sup>nd</sup> December 2012 that the premises have been rented out to a new tenant with effect from 1<sup>st</sup> January 2012 at the rate of Ksh. 80,000/- per month (the tenant was paying Ksh. 30,000/- per month.)
4. The landlord therefore required the tenant to vacate before the 1<sup>st</sup> January 2012.
5. The tenant filed appeal on 20<sup>th</sup> December 2011. A certificate of urgency, seeking stay of execution was then applied for and came before the court vacation judge on 28<sup>th</sup> November 2011 (Waweru J), 28<sup>th</sup>

December 2012 (Odunga J) when further date was given on 26<sup>th</sup> January 2012, (Waweru J ) for 1<sup>st</sup> March 2012 due to unavailability of a judge.

## II APPLICATION DATED 20<sup>TH</sup> DECEMBER 2012

6. It was the arguments of the applicant that he ran a business. If he is evicted out, the business would be rendered useless.
7. The issue of arrears of rent could be explained that this had been paid.
8. If stay is granted the tenant is willing to comply with orders.
9. In reply, the landlord's argument was that, whereas arrears of rent may have been paid, this had been deposited in the tribunal thus attracting a 10% charge which requires to be repaid.
10. There would be no substantial class that would be incurred by the tenant if termination is effected.

## III OPINION

11. It is this court's opinion that the application was brought to court without undue delay. That the substantial loss has been demonstrated through the loss of business.
12. The notice by the tribunal to vacate the premises from 1<sup>st</sup> January 2012 was not the 30 days period as according to law, time does not run between 21<sup>st</sup> December to 13<sup>th</sup> January of the following year. A notice given on 25<sup>th</sup> November to 1<sup>st</sup> January does not constitute 30 days of the tenancy.
13. The court would therefore allow this application and hereby grant orders for stay of execution of the tenant being terminated and evicted from his premises till the finalization of this appeal to be heard before two judges.
14. This court orders that security be provided of Ksh. 500,000/- and by way of a bank's guarantee and or insurance guarantee and or cash deposited in the joint account of the two advocates.
15. That the rent of Ksh. 30,000/- be paid per month to the landlord failure to, parties be at liberty to apply.
16. The costs of this application be in the appeal.

**DATED THIS 5<sup>TH</sup> DAY OF MARCH 2012 AT NAIROBI**

**M.A. ANG'AWA**

**JUDGE**

*Advocates* :

- i) *Kamere instructed by M/s Kamere & Co Advocates for appellant/applicant/tenant*
- ii) *E J Mutemi instructed by Nzamba Kitonga & Co Advocates for respondent/landlord*