



## REPUBLIC OF KENYA

### High Court at Nairobi (Nairobi Law Courts)

#### Civil Appeal 657 of 2011

#### Editorial Summary

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

#### BUSINESS PREMISES RENT TRIBUNAL

- 3.1 *Controlled tenancy*
- 3.2 *Landlord/tenant relationship*
- 3.3 *Notice by landlord to terminate tenancy for non-payment of rent (Ksh. 595,000/-)*
- 3.4 *Judgment of tribunal dated 25<sup>th</sup> November 2011. tenant to vacate with effect 1<sup>st</sup> January 2012*
- 3.5 *Landlord writes to tenant 2<sup>nd</sup> December 2012 that premises have been rented out with effect from 1<sup>st</sup> January 2012. Tenant must vacate before then.*
- 3.6 *Tenant files appeal 20<sup>th</sup> December 2011*
- 3.7 *Certificate of urgency seeking stay of execution.*
- 3.8 *Duty judge (vacation) allows interparte date*

*28<sup>th</sup> December 2011.*

3.9 *Duty Judge (Odunga J) allows adjournment to  
26<sup>th</sup> January 2012.*

3.10 *Further dates 1<sup>st</sup> March 2012*

3.11 *Application for stay of execution dated 20<sup>th</sup> December 2011  
granted 5<sup>th</sup> March 2012.*

3.12 *Condition:*

i) *The deposit of Ksh. 500,000/- in form of banker's  
guarantee, insurance guarantee or joint account  
two advocates.*

ii) *Payment of monthly rent of Ksh. 30,000/-*

iii) *In default likely to apply*

3.13 *Landlord applies to seek orders of stay of execution set  
aside on grounds of non-compliance of deposit of  
Ksh. 500,000/- as security.*

3.14 *The tenant fails to attend court at inter parte hearing.*

3.16 *Hearing of application 7<sup>th</sup> June 2012 heard  
exparte.*

4. *Application*

*7<sup>th</sup> June 2012*

i) *Leave to have orders of 5<sup>th</sup> March 2012  
(Stay of execution vacated.)*

5. *Held:*

6. *Case Law:*

7. *Advocates :*

i) *S. Kamere instructed by M/s Kamere & Co Advocates for  
appellant/respondent/tenant absent*

ii) *N. Kitonga instructed by Nzamba Kitonga & Co Advocates for*

*respondent/applicant/landlord present*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**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 in Case No. 881 of 2010 dated*

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

**RULING**

**Application to have orders of**

**Stay of Execution - vacated**

**Notice of Motion 7<sup>th</sup> June 2012**

**I. BACKGROUND**

1. The background of this matter is contained in the ruling of this court delivered on the 5<sup>th</sup> March 2012.
2. The relationship of the parties is that of landlord/tenant. The premises are controlled and fall under the Business Premises Rent Tribunal jurisdiction. The chairperson of the tribunal ordered that the tenant do vacate the business premises for failure to pay the landlord's rents. Being aggrieved, the tenant prayed to this High court but first prayed for orders of stay of execution during the Christmas vacation. The tenants was to vacate the premises as of 1<sup>st</sup> January 2012.
3. The court, after hearing the matter interparte allowed the application for stay of execution (Ang'awa J 5<sup>th</sup> March 2012) but on condition that the sum of Ksh. 500,000/- be deposited by way of bankers guarantee, insurance guarantee or cash in the joint names of the two advocates in an interest earning account.
4. The usual rent of Ksh. 30,000/- per month must be paid as usual.
5. Each party were at liberty to apply.

6. The tenant failed to return to court to apply for any change of terms – if he was in any difficulties. The landlady then made application to have the said orders vacated. It is this application dated the 7<sup>th</sup> June 2012 that is the subject of this ruling.

## II APPLICATION 7<sup>TH</sup> JUNE 2012

7. On the day called out for hearing, the advocate for the tenant was absent. This matter proceeded ex parte under Order 12 Civil Procedure Rules, as the advocate had taken consent date for the interparte hearing of this matter.

8. The application sought orders to set aside the stay of execution orders herein granted by this court. The grounds being that the tenant had failed to comply with the court's orders. The deposit of Ksh. 500,000/- had not been made.

## III OPINION

9. Should this court vacate the orders of stay of execution? The court noted that when the orders were given there was no time set of depositing the said sum of Ksh. 500,000/-, a time limit ought to have been set by this court.

10. I further note that the effect of setting aside the orders the orders of stay of execution would mean that if execution is effected, the tenant would be required to vacate the premises and thereby render the appeal of no use and purposes.

11. The rents are paid regularly. What the issue herein is that of security?

12. I would hereby order that the security provided by this court to be availed by the tenant of Ksh. 500,000/- be so provided within 90 days of today's date.

13. That this case be mentioned in 90 days. And the parties convene to confirm compliance failure to, the execution orders for stay be lifted.

DATED THIS 4<sup>TH</sup> DAY OF MARCH 2012 AT NAIROBI

M.A. ANG'AWA  
JUDGE

*Advocates* :

i) *S. Kamere instructed by M/s Kamere & Co Advocates for  
appellant/respondent/tenant absent*

ii) *N. Kitonga instructed by Nzamba Kitonga & Co Advocates for  
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