



**FAIRMONT MT. KENYA SAFARI
CLUB.....APPELLANT**

VERSUS

**JENNIFER WAMBUI
NYAKINYUA.....RESPONDENT**

R U L I N G

Fairmont, Mt. Kenya Safari club, the appellant herein, took out the motion dated 10th November 2011, in which it sought for the following orders:

- 1. THAT service of this application be dispensed with in the first instance.**
- 2. THAT this application be heard ex-parte in the first instance due to the urgency of the relief sought herein and a temporary order of stay of execution of the decision/ruling delivered on 11th October 2011 by the Business Premises Rent Tribunal in Reference No.99 of 2011 be granted pending inter partes hearing of this application.**
- 3. THAT the Honourable Court maybe pleased to grant a stay of the execution of the decision/ruling delivered on 11th October 2011 by the Business Premises Rent Tribunal in Reference No.99 of 2011 and any consequent decree flowing therefrom pending the hearing and determination of this application.**
- 4. THAT the Honourable Court be pleased to order a stay of the execution of the decree consequent to the decision/ruling delivered on 11th October 2011 by the Business Premises Rent Tribunal in Reference No.99 of 2011 pending the hearing and determination of the appeal filed herein.**
- 5. THAT the Honourable Court be pleased to order that the hearing of the main appeal filed herein does proceed on a priority basis.**
- 6. THAT the costs of this application e provided for.**

The motion is supported by the affidavit of Niall Cowan. Jennifer Wambui Nyakinyua, the respondent herein, filed a replying affidavit she swore together with a notice of preliminary objection to oppose the motion.

I have considered the grounds set out on the face of the motion together with the facts deponed in the affidavits filed in support and against the motion. I have further taken into account the oral submissions made by learned counsels from both sides together with the authorities supplied. The history of this appeal started when the appellant wrote a letter asking the respondent to sign a contract to regularize the tenancy relationship with the appellant. In the aforesaid letter the appellant threaten to give out the tenancy to another person to run a salon if she did not comply with the demand. The respondent was aggrieved hence she was prompted to file a complaint to the Business Premises Tribunal. The complaint was heard and sustained in favour of the Respondent by the Business Premises Tribunal vide its ruling

delivered on 11th October 2011. Being aggrieved, the appellant filed this appeal. The appellant has now sought for an order of stay of execution of the aforesaid ruling pending appeal. There is also a prayer for an order directing the appeal to be heard and determined on priority basis. When the motion came up for interpartes hearing, learned counsels appearing urged this court to dispose of first, the notice of preliminary. The aforesaid notice is dated 29th November 2011 in which the Respondent raised the following issues:

“TAKE NOTICE THAT the Respondent shall raise a preliminary objection to the hearing of the Application dated 10th November 2011 on a pure point of law being that there is no right of appeal in complaints filed under section 12 (4) of the Landlord and Tenants, Shop, Hotels and Catering Establishment Act Chapter 301.

The Respondent shall seek striking out with costs the application dated 10th November 2011.”

Mrs. Wanjau learned advocate for the Respondent urged this court to find that there was no competent appeal before this court hence the motion lacks any standing in law hence it should be struck out. It is her submission that the proceedings that led to the filing of this appeal arose out of a complaint filed under S.12 (4) of the Business Premises Rent Tribunal Act. It is argued that in such proceedings, there is no automatic right of appeal. In other words, an aggrieved party must seek for leave to appeal. Mr. Mugambi, learned advocate for the appellant was of the view that the preliminary objection should be dismissed for lacking in merit. It is the submission of Mr. Mugambi that this appeal raises serious questions touching on the jurisdiction of the tribunal. The appellant further questions the Respondent's Locus Standi before the tribunal. The question as to whether there was any valid tenancy will also have to be determined on appeal. After a critical examination of the rival submissions, it is clear in my mind that the appeal raises serious questions which go beyond the business of distinguishing between a complaint and a reference. I agree with the submissions of Mrs. Wanjau that if the question only relates to a decision made on a complaint filed under section 4 (3) of the Business Premises Rent Tribunal, then any aggrieved party does not have an automatic right of appeal. In the appeal before this court, the jurisdiction of the tribunal to entertain the complaint is being questioned. It is also clear from the memorandum of appeal that the Respondent's Locus Standi is being queried. The question as to whether there was a valid tenancy will also be interrogated on appeal. In sum, I think the preliminary objection cannot succeed in view of the serious questions of law and facts raised. The same is dismissed. The motion dated 10th November 2011 should proceed to hearing expeditiously to avoid further delay. Costs of the preliminary objection to await the outcome of the motion.

Dated and delivered this 17th day of August 2012.

J.K. SERGON
JUDGE

In Open Court in the presence of Mr. Mugambi for Appellant/Applicant

and No appearance for King\oo for Respondent.