



REPUBLIC OF KENYA

High Court at Mombasa

Civil Appeal 243 of 2009

1. MAHESH JAYANTILAL PATTNI
2. RAJU PATTNI
3. RASIK PATTNI.....APPELLANTS/APPLICANTS

VERSUS

1. AISHABAI ADAM YAKUB KASMANI
2. KHAIROONISA A. MUSSA.....DEFENDANTS/RESPONDENTS

Coram:

Mwera, J.
Magiya for Appellants
Kasmani for Respondents
Furaha Court Clerk

RULING

The present notice of motion dated 10th July, 2012 was brought under Order 50 rule 6 of Civil Procedure Rules and sections 1A, 1B, 95 of Civil Procedure Act. The prayer therein was:

(i) that the time for complying with the court's orders of 24th June, 2012 be enlarged by six (6) months from the date of the ruling to enable the applicant to comply.

It was stated in the grounds that the appellants were tenants in Flat No. 2, plot MBA/BLOCK/XVII/436 where the Rent Restriction Tribunal (RRT) increased the rent from Shs. 1,000/= to Shs. 15,000/=. The applicants filed a stay application pending appeal dated 24th June, 2012. A stay was granted on conditions to be complied with within sixty (60) days. That in default of paying one single amount due within that period, the entire sum of rent arrears, as per the increased rate, should become due and payable and the respondent would be at liberty to execute the Rent Restriction Tribunal orders. That the applicants were willing to comply with the conditions of stay except that the period be extended from the two (2) months as ordered to six (6) months.

The reason for this prayer is that the total back-dated rents amounted to Shs. 270,000/= which was a burden on the applicants who also have other immediate needs to cater for. It would be just and fair to grant the prayer. The 1st applicant/appellant (Mahesh) swore a supporting affidavit repeating what was laid out in the grounds. It was added that the respondents could not be prejudiced by such orders. As at this point the applicants have not exhibited/said anything about their financial sources/status and how paying the increased rents plus whatever the other immediate needs will constitute a burden. Anyway, the court was asked to apply its discretion in the matter.

In the replying affidavit sworn by the 1st respondent (Aishabhai), the motion under discussion was termed misconceived and bad in law. That the applicants were attempting to seek a review of the ruling by Ibrahim J in an untenable way. And even if it were so, no cogent reason has been put forth to disturb/vary the orders of 24th June, 2012 or how complying with the said orders would prejudice the appeal. And that hardship could not equate substantial loss. It was added that the applicants who at one point made an offer to buy the subject flat at Shs. 1.5 million should not allege hardship in paying Shs. 270,000/=. If the prayers are granted, it is the respondents to be prejudiced.

In submissions each went over the ruling of 24th June, 2012 which was delivered on 5th July, 2012. The respondents strenuously relied on section 95 of Civil Procedure Act and power to enlarge time within which something ought to be done in order to do justice. And that by sections 1A, 1B of Civil Procedure Act the overriding objectives could apply here. Further, that how the applicants had gone about this application, asking for enlargement of time set by Ibrahim J, was as well as what one would get by way of a review of the learned judges' ruling – simply a matter of a technicality. But still the applicants did not put forth material upon which payment of Shs. 270,000/= would be considered a burden, what other immediate needs were or deny the charge by the respondents that at one point the applicants offered to buy the subject flat at Shs. 1.5 million.

In this court's view the enlargement of time envisaged in section 95 Civil Procedure Act with Order 50 rule 6 Civil Procedure Rules is as regards time limits set down by provisions of the Civil Procedure Act or Civil Procedure Rules to do something. It is not for varying time limits pronounced in a determination by a court. And sections 1A, 1B come into play to breathe "oxygen" in judicial situation and thus to keep alive the same for the ends of justice to the parties. At this point this court is unable to discern the application of those provisions of law as put forward by the applicants. And a review in the legal sense cannot be taken to constitute a technical equivalent of a variation as proposed by the applicants.

And most importantly, had this court been minded to consider in favour of the applicants this motion, they have not attempted to place or demonstrate before it the circumstances that make it a burden to pay whatever sum, let alone Shs. 270,000/= within sixty (60) days. Nothing has been said about the incomes of the applicants as against the requirement to pay up. Or of those alleged other immediate needs they have. It appears as if the applicants came to court with nothing serious, concrete or tangible to ask for enlargement of time to pay. Yet here are people who, it was said but not denied, that at one point they proposed to buy the subject flat at Shs. 1.5 million. They should thus pay Shs. 270,000/= with ease and right away.

In sum this application is dismissed with costs.

Delivered on 22nd October, 2012.

J. W. MWERA

JUDGE