



REPUBLIC OF KENYA

High Court at Mombasa

Civil Appeal 162 of 2012

1. ALI ASGAR

2. REHANMOLU

3. MOHAMED BAFAGY T/A AMO PROPERTIES

4. ZEDCO RADIATORS & COOLING SYSTEMS LTD.....APPELLANTS

VERSUS

MUSLIM ASSOCIATION OF MSA.....RESPONDENT

Coram:

Mwera J.
Mutubia for Appellant
Magiya for Respondent
Furaha Court Clerk

RULING

On 3rd October, 2012 the appellants filed a notice of motion of the same day under Order 42 rule 6 of Civil Procedure Rules and sections 1A, 1B, 3A of Civil Procedure Act with a prayer:

(i) that there be a stay of execution of the ruling of 21st August, 2012 until this appeal is determined.

It was contended in the grounds that the appellants were the tenants of the respondent in plot No. MBA/BLOCK XVI/11. In September, 2011 the respondent sought to increase rent by issuing notices. That prompted the appellants to file references at the Business Premises Rent tribunal (BPRT) which that tribunal heard together. A judgment followed whereby the tribunal increased the payable rents by 26% without valid reasons. The respondent moved to levy distress against the appellants/applicants, giving rise to the present application. If stay orders are not granted the applicants would suffer substantial loss.

Khalil Ahmed Rubeya, a director of the 4th appellant company swore the supporting affidavit wherein old rents were tabulated side by side with the new ones for each tenant/appellants. They considered the increase exorbitant and that rents were last increased in 2009. That there were justifiable reasons to increase the rents. The applicants had continued to pay the old rents (annexure KAR 2) even as the respondent had levied distress. The rents demanded were substantial and would cripple the business of the applicants. They could abide by any conditions attached to the stay orders sought.

Yusuf Ibrahim the manager of the respondent association filed a replying affidavit. He termed the present application vague, malicious and bad in law. He opined that the applicants should pay the new rents. In the event their appeal succeeds the “overpayment” could be applied as future rents. That the rents were assessed based on market rental value and not that there were no justifiable reasons for the increase.

On 4th October, 2012 the court granted an interim stay order on condition that the applicants continued to pay the old rents, depositing the difference with the new rents in court. That was done and both sides submitted, each seemingly holding the position as narrated above.

At the end, the court concluded that the just, fair and proper position to take at this stage is to confirm the order of 4th October, 2012. No party will suffer prejudice whether the appeal succeeds or fails. In the event of success the appellants will utilize the deposits to cover future rents or demand refund. And in case of failure the respondent will apply for the deposits to be released to it without having to pursue the appellants afresh.

Orders granted on conditions stated on 4th October, 2012. Costs to the respondent.

Dated on 22nd November, 2012.

J. W. MWERA

JUDGE