



REPUBLIC OF KENYA

High Court at Kisumu

Civil Appeal 95 of 2012

FAITH AMONDI APIYO.....APPELLANT

VERSUS

GETRUDE OJWANG.....RESPONDENT

RULING

The appellant in her Notice of Motion dated 1st August 2012 prays that this court stays the execution of the Judgment in Kisumu Business Rent Tribunal Case No. 30 of 2012 dated 18th July 2012 pending the hearing and determination of the appeal. The same is supported by her affidavit sworn on the even date.

The appellant has since filed a Notice of Appeal to this court. It is opposed by the respondent vide her replying affidavit dated 29th August 2012.

After perusing the application and hearing both the appellant and the respondent counsels, what is not disputed is that the applicant is a tenant of the respondent. The rent tribunal ordered the tenant to vacate the respondent premise. Aggrieved by the said judgment the applicant has now filed this appeal.

The principles of granting stay pending appeal are grounded well under Order 42 Rule 6 of the Civil Procedure Rules and it includes:-

“(1) The court is satisfied that substantial loss may result to the applicant unless the Order is made and that the application has been made without unreasonable delay and

(2) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given to the applicant”.

I am satisfied that the application was made without undue delay. However what does the applicant stand to suffer? She stands to suffer the loss of using the business premises if she is evicted.

Does the respondent stands to suffer loss either? Yes she shall if indeed the appeal at the end of the day is dismissed without having recovered her rent. The respondent is claiming the rent arrears of Kshs. 138,000 which the applicant contest.

In the interest of justice therefore and for equitable purposes I do order that the applicant do pay the respond the sums of Kshs. 100,000 within the next fourteen (14) days from the date herein. This shall include the sum of Kshs. 41,000 already deposited in court.

Further the applicant shall continue to pay the usual monthly rent from the next month after the delivery of this Ruling till the conclusion of the appeal.

The aforesaid sum of Kshs. 100,000 in the event that the applicant shall have over paid the respondent shall be computed at the end of the appeal and refunded to the applicant or the same be applied to the rent.

In default of the above compliance the respondent be at liberty to effect the tribunal judgment .

Costs of this application shall abide the appeal.

Dated, signed and delivered at Kisumu this 14th day of November 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

P. J. Otieno for Odeny Advocate for the Appellant

Juma Advocate for the Respondent

HKC/aao