



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 246 OF 2010

(Arising from Rent Restriction Case No. 26 of 2010 of the Rent Restriction Tribunal at Mombasa)

N.H.E. BHAJEE APPELLANT

=VERSUS=

WAKF COMMISSIONERS OF KENYA RESPONDENT

RULING

By the Amended Notice of Motion dated 15th December 2010 the Applicant sought inter alia the following orders:

“THAT this Honourable Court be pleased to enlarge the time of the duration of the stay of execution of the orders of the Rent Restriction Tribunal dated 3rd September 2010 and grant leave to the applicant to file his appeal out of time”

The Applicant also filed another Notice of Motion dated 3rd February 2011 by which he sought inter alia orders:

“THAT a temporary injunction be granted herein to restrain the Respondent their agents and/or servants from attaching, removing, advertising and/or offering for sale by public auction and/or any other way whatsoever from dealing or interfering with the applicants movable properties situate in the premises on Plot No. XXXVI/MI pending hearing and determination of appeal dated 15th December 2010”

This latter application was heard by my learned brother **HON. JUSTICE M.K. IBRAHIM** who granted the above interim orders which were to remain in force pending the hearing and determination of the application dated 15th December 2010. **Mr. Dennis Mabeya** Advocate represented the Applicant in this matter whilst **Mr. Hamza** appeared for the Respondent. By consent of the parties it was agreed that the applications be heard together and further that they be disposed of by way of written submissions. Both parties having filed their written submissions as agreed the matter is now pending for the court’s ruling.

I have carefully perused and considered the written submissions filed in this matter. The subject matter of the application is Plot No. XXXVI/MI, owned by the Wakf Commissioners who are the landlords and leased by the applicant who is a tenant therein. The Rent Restriction Tribunal by its ruling dated 7th September 2010 increased the rent of the said premises from Kshs.1,800/- to Kshs.3,500/- with effect from 1st October 2010. The Respondent is challenging and seeks to appeal against this decision of

the Rent Restriction Tribunal. A Memorandum of Appeal dated 9th December 2010 is annexed.

I have considered the submissions filed by both counsel and I have also perused the record of the proceedings before the Rent Restriction Tribunal. At the outset it is imperative to note that the Applicant has no proprietary interest in the suit premises. He is merely a tenant. As such the Applicant's stay in the suit premises is dependant on whether he has a lease agreement in place.

The Applicant claims that the Rent Restriction Tribunal came to its decision without allowing him an opportunity to put forward his side of the case. I have perused the record of the proceedings before the Tribunal and I find that this is not entirely correct. The proceedings of 2nd September 2010 indicate that both parties (including the Respondent) were in the Tribunal at the time the matter was heard. More importantly on 3rd September 2010 the record indicates that the site visit was conducted in the presence of **both** parties. The Applicant cannot now claim that he was denied an opportunity to be heard.

Leasing of premises is ordinarily conducted on a '*willing seller – willing buyer*' basis so to speak. If the Respondent wishes to continue residing in the Respondent's property then he must accept to do so at the Respondent's terms. The Applicant cannot seek to dictate the terms upon which the Respondent will lease out his own property. Once again I must emphasize that the Applicant has no legal and/or proprietary rights in the suit premises. The Respondent has not broken any known law nor has he committed any illegality by raising the rent on his own property. The record indicates that the Applicant did participate in the proceedings before the Rent Restriction Tribunal. The Respondents have the right to obtain a viable return on their property. The Applicants only remedy was to either comply with the notice for rent increment or if he is unwilling to do so, seek alternative accommodation. The Applicant cannot demand to reside in the Respondent's premises on his own terms. I find no merit in either of the applications dated 3rd September 2010 and 15th December 2010. I hereby dismiss both applications and award costs to the Respondent. It is so ordered.

Dated and Delivered in Mombasa this 8th day of June 2011.

M. ODERO
JUDGE

In the presence of:

Mr. Odhiambo holding brief for Mr. Buti for Appellant

No appearance by Respondent