



1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of Subordinate Court*
 - i. *Business Premises Rent Tribunal*
 - ii. *Assessment of Rent*
4. *Application 4 March 2011*
 - i. *Stay of execution of Judgment dated 4 February 2011 pending appeal*
 - ii. *Chairman assessed rental income and came up with an increased sum for payment of rent.*
 - iii. *The increased sum be not implemented till the haring of appeal.*
5. *In reply*
 - i. *No evidence to show substantive loss.*
 - ii. *No substantial security has been offered.*
 - iii. *Rent license reasonable.*
6. *Held:*
 - a. *Stay of execution granted.*
 - b. *Costs to Landlord /respondent*
7. *Case Law:*
 - a. ***White Rose Drycleaners Ltd v A. H. Adams Investment Ltd***, *Aganyanya J; Ransley J (no*

citation given)

b. **Commercial Bank of Africa v Mohansons Food Distributors & 2 Others**

HCC 130 of 2000 Nairobi

D. K. Maraga (Ag. Judge)

c. **I. T. Inamdar & 2 others v Postal Corporation of Kenya**

HCCC 1629/2000 Nairobi,

Visram J.

d. **Wangethe Mwangi & Another v J. P. Machira T/A Machira & Co. Advocates (2005) eKLR. CA. 211 of 2003**

Githinji, Waki, Deverell JJA.

e. **Deepak Shah T/A Azo Sales v Dhavinder Singh Rahal & Another T/A Manjat Building Contractors eKLR KSM 2007**

J. R. Karanja J.

8. *Advocates*

a. *M. M. Kinuthia holding brief for J. Kimani instructed by M/s Ondabu & co. Advocates for the appellant/Original Plaintiff*

b. *J. J. Wachira instructed by M/s Mbugua V. W. & Co. Advocates for the Respondent/Original Defendant*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO.88 OF 2011

**BARTHOLOMEW WANYAMA.....APPELLANT/ORIGINAL
PLAINTIFF**

VERSUS

**ANCHOR INVESTMENTS LIMITED.....RESPONDENTS/ORIGINAL
DEFENDANT**

*(Being an appeal arising from the proceedings and judgment of Hon. D. Mochache Esq, the
Chairperson of the*

Business Premises Rent Tribunal in Tribunal Case No.57 of 2010 delivered on 04 February 2011)

RULING

I. BACKGROUND

1. The relationship between the parties is that of Tenant/Landlord. A case was originally filed in the Business Premises Rent Tribunal by 4 – 5 tenants. The premises in question being LR. No.1 of 822 (in part) situated at Fatima Court on the Junction of Agwings Kodhek and Marcus Gravery Road.
2. The premises being controlled, the landlord had sought to increase the rent payable. The chairperson of the Business Premises Rent Tribunal sitting alone assessed the rent payable for the 4 to 5 tenants premises that increased the rent (4 February 2011)
3. Being dissatisfied with the judgment of the Tribunal court, the applicant herein filed an appeal on 4 May 2011 together with a Notice of Mention of the same date seeking orders of stay of execution of the said judgment

II. APPLICATION 4 MARCH 2011

4. The applicant argued that the assessment of rent arrived at by the Chair of the tribunal was excessive. There was no legal basis upon which it was arrived. The parties want to be heard on appeal.
5. The issue of retrospective rent being paid was questioned.
6. In reply, the respondent stated that in an application for stay of execution, the applicant must show there was to be a substantial loss that may occur if stay is not granted. This has not been demonstrated.
7. Further, the applicant must demonstrate that security for stay of execution is offered.
8. Several Case Laws were referred, some touching on the main appeal.

III. FINDINGS

9. The intention of the applicants is to stay further payments of new rent as assessed by the tribunal pending the hearing of their appeal against that decision by the chair of the tribunal.
10. They must therefore show that if they begin to pay the new rent, they would suffer loss. According to the respondent, that loss has not been demonstrated in this case.
11. The tenants/applicants are protected tenants according to statute. It therefore means that the issue of an increase rent would affect their business to their detriment on the grounds that they are so protected. This is sufficient to state that they would indeed suffer loss before they are heard. The increment is almost by 50%.
12. I would accordingly hold that a stay of execution do issue pending the hearing of this appeal before TWO judges.
13. As to security to be issued, this is discretionary by the court. I would order that the rent payable prior to the judgment of 4 February 2011 do continue till the finalization of the appeal.
14. There will be costs to the Landlord/respondent.

RULING DATED THIS 3RD DAY OF JUNE 2011 AT NAIROBI

M. A. ANG'AWA

JUDGE

Advocates

a. *M. M. Kinuthia holding brief for J. Kimani instructed by M/s Ondabu & Co. Advocates for the appellant/Original Plaintiff*

b. *J. J. Wachira instructed by M/s Mbugua V. W. & Co. Advocates for the Respondent/Original Defendant*