



SUMMARY NOTES

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Main Tribunal Case*
 - 4.1 *Landlord and Tenant (Shop, Hotel and Catering Establishments) Act Cap 301 Laws of Kenya*
 - 4.2 *Business Premises Rent Tribunal*
 - 4.3 *Respondent/Tenant in occupation of the tenancy for 12 years Sublets to the various sub-tenants.*
 - 4.4 *Property sold. New landlord does not approve of sub-letting*
 - 4.5 *issues of increase of rent for all tenants raised Tenants appeal*
 - 4.6 *Case pending appeal 77/2011*
 - 4.7 *reference in subordinate court case 254/11 judgment*
 - a) *Rent Ksh. 198,000/- lost to them in April 2011.*
 - b) *Be credited to the tenant's rent account. Rent paid after received.*
 - b) *Costs to be paid*
 - c) *Sub-tenants to pay rents to landlord*
 - d) *OCS to ensure compliance*
4. *Appeal HCCA 381/11 against orders of tribunal*
 - i) *Application certified urgent*
 - ii) *Application 8th August 2011 for stay of execution until hearing of application and after main appeal*
 - iii) *Application granted (Maraga J)*
5. *Application – Certificate of Urgency 11th August 2011 (before Ang'awa J.)*
 - i) *Advocate for respondent*
 - ii) *Interparte hearing notice of motion 8th August 2011 be struck out*
 - iii) *Appeal does not lie to court (Ang'awa J.)*
6. *In reply:*
The Constitution safe guards on the urgency to be heard
7. *Held:*
Application struck out
No right of appeal
8. *Case Law:*
 - i) *Hebatulla Properties Ltd KLR 96*
 - ii) *Dynamic Institute of Management & Accounting – Vs – Apollo Insurance Co. Ltd (2004) eKLR*

9. *Advocates* :
- i) *J.H.Kinyanjui Advocate instructed by M/s J H Kinyanjui & Co Advocates for the appellants/respondents*
 - ii) *L.W. Kangatta advocate instructed by M/s Mutimu Kang'atta & Co Advocates for the respondent/applicant*
 - iii) *M Kamande Advocate present in a related matter*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 381 OF 2011

GULED HOUSING CO. LTD APPELLANT/ ORIGINAL RESPONDENT

VERSUS

DEEKEE HOLDINGS LTD..... RESPONDENT/ ORIGINAL PETITIONER

(Being an appeal from the Judgment and Order of the Honourable Mrs D. Mochache, in the Business Premises Tribunal of Kenya at Nairobi, Tribunal Case No. 254 of 2011)

RULING

Application to Strike Out Application

8th August 2011

I. BACKGROUND

1. This whole matter emanates from landlord/tenancy relationship that is controlled. M/s Deekee Holdings Ltd, the respondent tenant claims that for twelve years he had been in possession of the suit premises. They then sublet the premises to small exhibition shops/business premises to third parties herein referred to as sub-tenants. Three years ago the property was sold. The new landlord proceeded to the Business Premises Rent Tribunal and therein had the rent increased. The said tenant came to this High Court and obtained a stay in another appeal file which is still pending before this court.

2. The landlord M/s Guled Housing Co. Ltd it is alleged, attempted to disrupt and close the tenants' business. A reference tribunal case 254/2011 was filed by the tenant. They obtained orders on 14th April 2011 that later stayed. The said tribunal case 254/2011 carried a complaint. In its judgement, the chairperson ordered that the landlord is to:

i) Stop interfering with the tenants pure enjoyment of the tenancy process and in particular stop collecting rent from the tenants and that

ii) The amount of rent Ksh. 198,000/= per month lost by the tenant for April 2011 be credited to the tenant's account and tenant will be liable to start paying rent to the land after it was recovered the rent it has lost to the landlord.

iii) The landlord shall pay the tenants cost of this dispute issued at Ksh. 70,940/= to be credited to the tenants' rent account

iv) The sub-tenant should be better advised to start paying rent to the tenant herein (their landlord) to avoid the risk of a levy of distress.

v) OCS Kamukunji police station is to enable compliance of this order (i) above is done regarding the tenants quite enjoyment of the tenancy premises so that peace prevails.

3. The said orders dated 29th July 2011, so issued, aggrieved the landlord. On the 8th August 2011. They filed an appeal. That together with this appeal they also filed an application before the vacation judge **Maraga J** and sought orders of stay of execution of the orders of the said tribunal.

4. It was then that the vacation judge granted the orders and called parties for interparte hearing on 27th September 2011. Before the 27th September 2011, the tenants engaged an advocate L.M. Kangata who filed an application seeking for the application of 8th August 200 to be struck out. The grounds being that the said matter carried a complaint under Section 12. There is no right of appeal to this court.

5. The respondent opposed the application and stated that on the very same point and on issue the tenant has filed a matter on appeal. It was further noted that the said Constitution of Kenya gave a right to be heard.

II ISSUE

6. The issue in question is that the right to appeal to the High Court lies under the Landlord and Tenant (shops, Hotel and Catering Establishment) Act Cap 301 Section 15(1). This Section therein allows an appeal to the High Court on a requirement that is governed under Section 4 (5). This Section deals with the termination, altering the terms of tenancy, the conduct of controlled tenancy and the issuance of such notices. Anything else requires to be dealt with under Section 12(4) that covers the powers of the Tribunal to investigate any complaints relating to a controlled tenancy made to it under the Act. A complaint therefore under Section 12(4) once dealt with by the tribunal, has no right of appeal to the High Court.

III FINDINGS

7. I am persuaded by the authorities presented herein of

Re Hebatulla Properties Ltd

(1979) KLR

Simson and Chesoni JJ

and the case of

Dynamic Institute of Management and Accountancy (Dima) Ltd – Vs - Apollo Insurance Co. Ltd

Visram J 2004 eKLR.

8. That under Section 12(4) of the Act there lies no appeal to this High Court.

9. To this end I would set aside the ex-parte orders granted by the vacation judge (Order 18 Civil Procedure Rules.) On 9th August 2011 to the landlord. That the application of 8th August 2011 be and is hereby struck out.

10. There will be costs to the respondent.

DATED THIS 21ST DAY OF SEPTEMBER 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

Advocates :

- i) J.H.Kinyanjui Advocate instructed by M/s J H Kinyanjui & Co Advocates for the appellant/respondent*
- ii) L.W. Kangatta advocate instructed by M/s Mutimu Kang'atta & Co Advocates for the respondent/applicant*
- iii) M Kamande Advocate present in a related matter*