



RULING NO. 4

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of original suit*

BUSINESS PREMISES RENT TRIBUNAL

- 3.1 *Orders of eviction granted on a Preliminary
Objection of 7th October 2010.*
- 3.2 *Appeal filed to High Court 5th November 2010*
- 3.3 *Certificate of urgency Mwera J orders application
be served 15/16th November 2011.*
- 3.4 *Before Maraga J 19th November 2010
stood over generally.*
- 3.5 *Before Maraga J 7th December 2010 consent*

of both parties – status quo to be maintained.

3.6 *Landlord files application for eviction in the subordinate court case.*

3.7 *Before Mwilu J 18th January 2011 more time given.*

3.8 *Before Khaminwa J more time given
7th December 2010 orders of Maraga J extended.*

3.9 *Before Khamina J 15th February 2011 orders of
7th December 2010 vacated.*

3.10 *Before Angawa J Certificate of Urgency
contempt proceedings orders of magistrate
null and void.*

4. *Interparte hearing*

a) *Attempt to have 3 bench*

b) *New rules brought to advocate's attention,
matter only before one Judge.*

c) *Attempt to raise Preliminary Objection.*

d) *Objection as not pure law raised but
also facts.*

- e) *Court orders application be heard together
with Preliminary*

Objection.

5. *The applicant submits and completes.*

Respondent attempts to submit but Preliminary Objection

Raised on ground that:-

5.1 *Orders of 7th December 2010 by
Maraga J being challenged by advocate for
Respondent.*

5.2 *Brings disrepute to the court and challenges
Integrity of court if orders are challenged to
Say it is incorrect.*

6. *Held:*

Whereas

i) *Orders of 7th October 2011, made by
Maraga J*

ii) *Khamina J heard the contempt proceedings
and ordered that the same was breached.*

iii) *Question raised is on Order 7th October 2011
that it was not correct.*

iv) *No application made to set and or review orders.*

v) *File*

7. *Case Law:*

8. *Advocates :*

i) *C. Kanjama instructed by M/s Mumma & Kanjama & Co Advocates for appellant/applicant*

ii) *L Kangatta instructed by for M/s Mutimu Kangatta & Co Advocates for respondent/respondent*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 470A OF 2010

JANE WACHUKA CHEGEAPPELLANT/ LANDLORD

VERSUS

AMM HOLDINGS LTD RESPONDENT/ TENANT

(Being an appeal from the Ruling and Order of Hon. D. Mochache Esq, Chairperson, Business Premises Rent Tribunal in Tribunal No. 701 of 2010 dated 7th October 2010 at Nairobi)

RULING NO. 4

I. INTRODUCTION

1. The issue before me is that of the orders of Maraga J dated the 7th December 2010 where the Hon. Judge recorded

“By consent,

Mention on 18th January 2011 in the interim status quo including proceeding Milimani CMCC No.

6519 of 2010 to be maintained.”

2. The appeal division of the High Court was handed to Khaminwa J. She extended this order 15th February 2011 but on 8th August 2011 she ruled that those orders had been breached and there was contempt established.
3. The division was then handed to Angawa J who received an application to declare the orders of Hon. Magistrate was null and void.
4. The court is at an interparte hearing.

II BACKGROUND

5. The Business Premises Rent Tribunal, upon hearing orders of Preliminary Objection upheld the objection of 7th October 2010 and allowed for orders of eviction of the appellant tenant. The said tenant filed appeal on 5th November 2010 under a certificate of urgency. The duty Judge ordered the application be served 16th November 2011. The parties were absent before Maraga J – 19th November 2010 and matter stood over generally. On 7th December 2010, Maraga J gave orders by consent of both parties – status quo to be maintained.
6. Landlord filed suit in subordinate court and obtained orders of eviction.
7. The tenant comes to court and prays this court deems those orders null and void.
8. Both application and Preliminary Objection were taken together to be heard. Applicant has completed submissions. Respondent questions the orders of 7th December 2010 by Maraga J.
9. The applicant objects. Those orders are still on record. No attempt to review and or set them aside. Orders made in presence of advocate.

III FINDINGS

10. It was the intention of this court to complete this matter expeditiously. Khaminwa J is not available, being indisposed. Maraga J heads another division.
11. As the parties whose case lies with the issue of the orders of 7th December 2010 by Maraga J, I hereby order that this file be placed before Maraga J to confirm that the orders of 7th December 2010 were so correctly made.

To give further directions on this matter.

Parties to appear before Maraga J, then parties return to this court if need be.

DATED THIS 9TH DAY OF DECEMBER 2011 AT NAIROBI

**M.A. ANG’AWA
JUDGE**

Advocates :

- iii) *C. Kanjama instructed by M/s Mumma & Kanjama & Co Advocates for appellant/applicant*
- iv) *L Kangatta instructed by M/s Mutimu Kangatta & Co Advocates for respondent/respondent*