



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 119 of 2009**

**NANCY M. MWONGERA.....APPELLANT/APPLICANT
VERSUS**

**THE BOARD OF GOVERNORS, SALVATION ARMY
THIKA HIGH SCHOOL FOR THE
VISUALLY CHALLENGED PERSONS.....RESPONDENT**

R U L I N G

1. By a Notice of Motion dated 3rd April, 2009, Nancy M. Mwangera, hereinafter referred to as the applicant, has moved this Court for orders that pending the hearing and determination of the appeal herein and/or further orders that this Honourable Court discharge vary, stay and/or set aside the orders issued on 12th February, 2009 in the Rent Restrictions Tribunal Case No. 198 of 2008.
2. Obviously, the application is very poorly worded as it appears that the applicant is seeking multiple orders. However, it is evident from the grounds on the face of the application and the affidavits sworn by Nancy M. Mwangera that the applicant is essentially seeking an order of stay of execution of the orders issued by the Tribunal on the 12th February, 2009, contending that unless the orders are stayed, she would be evicted from the suit premises and her appeal which raises serious issues of law and fact will be rendered nugatory.
3. The genesis of this application is the dismissal of an application which was lodged by the applicant in the Rent Restriction Tribunal for an order of interlocutory injunction restraining her employer, the Broad of Governors Salvation Army Thika High School for the Visually Challenged Persons, hereinafter referred to as the respondent, from evicting her or interfering with her quiet possession of the house which she was occupying within the respondent's compound.
4. Having heard the application the Chairman of the Tribunal dismissed the application holding that the applicant's tenancy was excluded from the application of the Rent Restriction Tribunal Act Cap.296. The Chairman of the Tribunal further ordered that the applicant vacates the premises and deliver vacant possession on 12th April, 2009. It is these orders that the applicant is aggrieved of contending that the Tribunal gave prejudicial orders at an interlocutory stage, and therefore the applicant has an arguable appeal with a probability of success.
5. The application was opposed through a replying affidavit sworn on 28th April, 2009, by Alfred M. Kamau, who is the secretary to the Board of Governors of the respondent. It was contended that the applicant should vacate the premises as her continued occupation is causing undue inconveniences to the respondent who require the house for other more deserving teachers. It was contended that the applicant's appeal does not have overwhelming chances of success and that in any case she can be compensated by award of damages. It was deponed that the applicant's employment was terminated, and the applicant having received her dues of Kshs.164,199/= her continued stay in the school was unprocedural, unlawful and illegal. It was further maintained that the applicant's tenancy was a service tenancy which is excluded from the application of the Rent Restriction Act. In a further affidavit sworn in reply to replying affidavit sworn by Alfred M. Kamau, the applicant depones that the termination of her employment was illegal and malicious and cannot be relied upon by the respondent. She maintains that she is lawfully residing in the premises as she is paying rent.
6. I have carefully considered the application. It is not disputed that the Tribunal dismissed the applicant's application for an

interlocutory injunction. In my view, the effect of that was that the respondent was at liberty to recover possession of the premises. The applicant now seeks to stay the orders of the Tribunal contending that the Tribunal had no jurisdiction to order her to vacate the premises.

7. Having considered the application, it is apparent to me that the issue as to whether the Tribunal had the jurisdiction to make the orders of which the applicant is aggrieved, is a subject of the appeal and it will be premature at this stage to dwell upon this issue. Suffice to note that the applicant was in occupation of the premises as an employee of the respondent. It was deponed by the respondent's secretary that the applicant left the employment of the respondent on the 12th February, 2008 and that she has been paid all her dues. In her further affidavit, the applicant has not denied that her employment was terminated or that she was paid her dues. Even though the applicant claims that her termination is illegal, it would be prejudicial to restrain the respondent from evicting the applicant from the premises or re-allocating the premises as the premises are meant for servicing employee.
8. For this reason, I find no merit in this application and do therefore dismiss it with costs.

Dated and delivered this 24th day of March, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Muriithi for the appellant/applicant

Advocate for the respondent absent

Eric - Court clerk