



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Miscellaneous Application 342 of 2009

R. K. LEMPAA.....APPLICANT

VERSUS

JOHN KANYORO NJUGUNA.....RESPONDENT

RULING

Before me is an application brought pursuant to **sections 79G and 95 of the Civil Procedure Act, Order 41 rules 4(1) and (2) and 49 rule 5 of the Civil Procedure Rules**. The Business Premises Rent Tribunal in **Nakuru Tribunal Case No.61 of 2008** delivered a judgment in favour of the respondent and against the applicant on 10th July, 2009.

The applicant has averred that neither he nor his advocate was notified of the date of the judgment the judgment having been reserved for 8th May, 2009 but not delivered. The applicant was dissatisfied with the judgment and intends to appeal out of time, hence the present application for stay of execution and leave to appeal out of time.

In response to this application, the respondent has averred that contrary to the applicant's assertion that he attended court on 8th May, 2009 when the judgment was reserved, that indeed it is only the respondent who did so. That the applicant was notified of the delivery of the judgment on 3rd August, 2009 but ignored the notice

It is also deposed that the applicant having vacated the premises in question, the intended appeal will serve no useful purpose.

I have considered the foregoing arguments as well as the applicant's so-called further affidavit. It is not denied that the Tribunal ordered the applicant to pay Kshs.14,600/= in rent with effect from the date of the notice. It is also common ground that the respondent has demanded from the applicant Kshs.168,530/= in rent arrears and costs.

The applicant intends to appeal out of time on the ground that the date of the delivery of the judgment was not communicated to him. An appeal from the Tribunal to the High Court must be filed within a period of thirty days. The High Court, however, may admit an appeal out of time if the applicant satisfies it that he had good and sufficient cause for not filing the appeal in time.

Whether or not to enlarge time to bring the appeal is a matter of judicial discretion. In this instance, the applicant must demonstrate that there was a good and sufficient justification for failing to file the appeal within thirty days from the date of the judgment.

Judgment was delivered on 10th July, 2009 and it is not in dispute that the initially reserved dated was 8th May, 2009. Again it is not denied that the date of 10th July, 2009 was not communicated to the applicant. The applicant has deposed that his advocate learnt of the judgment on 3rd September, 2009. Twenty (20) days upon learning that the judgment was delivered, the present application was instituted and filed together with a draft of the intended appeal. I have seen a letter addressed to the applicant's advocate annexed to the respondent's replying affidavit advising the applicant that the judgment was delivered on 10th July, 2009.

I am, on the basis of the averments from both sides, of the considered view that the applicant had no notice of the judgment and that that explains his failure to lodge an appeal against the judgment. That is a good and sufficient cause. Although the applicant has vacated the

respondent's premises, the former aggrieved by the judgment is entitled to appeal on the ground of quantum and the effective date.

For these reasons, the application is allowed with costs. The applicant has leave to file and serve the appeal within fourteen (14) days from the date of this order.

I observe that the prayer for stay was limited only to the *interpartes* hearing of this application.

Dated, Signed and Delivered at Nakuru this 2nd day of June, 2010.

W. OUKO
JUDGE