



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL CASE NO.930 OF 1985

BONIFACE K. KAMAU.....PLAINTIFF
VERSUS
JUSTUS MATHENGE.....DEFENDANT

RULING

1. On 15th June, 2006, this court granted an order staying execution of its judgment delivered on 24th October, 2005 pending the hearing and determination of an appeal filed in the Court of Appeal. The order for stay of execution was issued on the following conditions:

- (i) That the applicant do pay to the respondent rent for the suit premises at market rate with effect from the date of judgment until appeal is determined.
- (ii) That the amount said to be deposited into an interest earning accounts to be opened in the joint names of counsels.
- (iii) Mesne profits assessed at Kshs.264,000/= to be deposited in the said account.
- (iv) In default execution to issue.

2. The plaintiff now seeks an order setting aside the order of stay of execution dated 15th June, 2006 and a further order for the defendant's eviction from the suit premises. The plaintiff maintains that the defendant has failed to comply with the orders of 15th June, 2006.

3. The defendant has sworn a replying affidavit in which he contends that he is not in breach of the order of the court nor does he owe the plaintiff any money. He contends that he has not prevented the plaintiff from executing the decree. He further depones that it would not be in the interest of justice and fairness for him to be evicted from the suit premises as he has been in occupation for a very long time.

4. I have carefully considered the application. The order of stay of execution issued by the court on 15th June, 2006 is clear as to the terms the defendant was expected to comply with. The defendant has not demonstrated that he did deposit the sum of Kshs.264,000/= as ordered nor has he exhibited any evidence of payment of rent. Moreover, the defendant has not shown what efforts he has made to prosecute his appeal in the Court of Appeal more than 4 years since the order of stay of execution was granted. In the circumstances, it is evident that the order for stay of execution pending appeal is merely being used by the defendant to delay the applicant from reaping the fruits of his judgment.

5. Accordingly, I allow the application dated 25th February, 2008 and order that the stay of execution pending appeal issued on 15th June, 2006, shall be lifted and an order for eviction shall issue against the defendant.

Those shall be the orders of this court.

Dated and delivered this 26th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Kimani for the plaintiff
Ms Lusweti for the defendant
B. Kosgei - Court clerk

