



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CIVIL APPEAL 157 OF 2009

CHARLES MAINA MURIUKI.....TENANT/APPLICANT

VERSUS

WILLIAM LAWRENCE WACHIRA.....LANDLORD/1ST RESPONDENT

CHARLES KIRAGU MUMENYA.....LANDLORD/2ND RESPONDENT

NGARE WAMBUGU.....LANDLORD/3RD RESPONDENT

GEORGE NDEGWA MUMENYA.....LANDLORD/4TH RESPONDENT

R U L I N G

1. On the 12th March, 2009 the Business Premises Rent Tribunal made orders in Tribunal Case No.66A of 2006, Nyeri, allowing a notice which was issued by William L. Wachira, George Ndegwa, Ngare Wambugu and Charles Kiragu (hereinafter referred to as the landlords), to Charles Maina Muriuki (hereinafter referred to as the Tenant/applicant). The Tribunal further directed that the applicant's tenancy be terminated and the applicant ordered to vacate the premises by 1st April, 2009.
2. On 31st March, 2009, the applicant lodged an appeal in this court against the orders made by the Tribunal on 12th March 2009. On the same day, the applicant also filed a notice of motion under certificate of urgency seeking orders for stay of execution of the orders made by the Tribunal on 12th March, 2009 pending the hearing of his appeal.
3. The applicant maintained that the respondents were guilty of breach of the Tribunal process. The applicant further contended that the orders made on 12th March, 2009, were bad in law and have denied the applicant his source of livelihood, which he derives from the suit premises. The applicant maintained that unless an order of stay of execution was issued, the applicant would suffer substantial loss as his tenancy would be terminated. The applicant disputed the alleged outstanding rent but deposited a sum of Kshs.60,000/= pursuant to orders issued by the court on 9th April, 2007.
4. One of the Landlords, William Lawrence Wachira, (hereinafter referred to as the 1st respondent) filed

a replying affidavit in which he maintained that the orders of eviction were properly given as the applicant was persistently in arrears of rent. George Ndegwa Mumenya who is also one of the Landlords also swore an affidavit in which he deponed that all issues between the parties were completely and conclusively determined by the Business Premises Rent Tribunal. He contended that the applicant had filed Rent Restriction Tribunal Case No.47 of 2006, but had failed to pursue the substantive suit after obtaining interim orders. He also swore that the applicant had failed to pay rent to the respondents as ordered. The respondents maintained that they are all over 55 years of age and derive their livelihood from the rent charged on the suit premises.

5. Mumenya swore that the applicant has completely locked the premises and refused to pay any rent. He swore that the applicant does not carry on any business in the suit premises nor does he hold any licence or permit from the Municipal Council of Karatina. Mumenya further swore that the application was an abuse of the court process as there are two orders of stay obtained by the applicant in two separate courts. Mumenya stated that the applicant had not fulfilled the requirement for granting order of stay of execution as provided for under Order XLI Rule 4 of the Civil Procedure Rules.

6. Mr. Wainaina who appeared for the applicant argued that the orders issued on 12th March, 2009 by the Tribunal were prejudicial to the applicant as they have the effect of terminating the lease. It was further submitted that the multiple suits filed by the applicant were necessitated by the references filed pursuant to notices issued by the respondents. It was argued that the premises were closed and the applicant was therefore not operating. It was maintained that the likelihood of the respondents refunding the decretal sum was nil and therefore the applicant was likely to suffer substantial loss if successful on appeal unless orders were issued staying the execution of the tribunal orders.

7. Mr. Gichuru who appeared for 2nd to 4th respondent submitted that the applicant had not satisfied the conditions for granting an order of stay of execution as provided under Order XLI Rule 4(2) of the Civil Procedure Rules, as he had not shown that he will suffer any substantial loss if the orders sought are not issued. It was submitted that since the applicant was no longer carrying on business in the suit premises, he will not suffer any loss if the order of stay of execution is not issued. Relying on ***HCCC No.189 of 1998, Orion Holdings Ltd vs Loisa N. Mwaura***, it was maintained that an award of damages would provide adequate compensation to the applicant.

8. I have carefully considered the application, the affidavit in support and in reply as well as the submission made by counsel. I do note that execution of the orders issued on 12th march, 2009 would compromise the applicant's appeal as the suit premises may no longer be available to the applicant once he vacates the suit premises. Nevertheless, it is conceded by the applicant that although he is still in possession, the premises have remained closed and the applicant is therefore not operating any business at the premises.

9. Secondly, it is also conceded that there is some rent due and owing from the applicant to the respondents. While it is true that the applicant stands to lose the suit premises if the order of stay of execution is not issued, it cannot be said that he stands to suffer substantial loss since he is not carrying on any business at the suit premises. Substantial loss being the cornerstone upon which an order of stay of execution can be anchored, it follows that the applicant has failed to satisfy the main condition for granting an order for stay of execution pending appeal as provided under Order XLI Rule 4(2) of the Civil Procedure Rules. Accordingly, this application fails and is dismissed with costs.

Those shall be the orders of this court.

Dated and delivered this 22nd day of May, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the tenant/applicant absent

Gichuru for 2nd to 4th Landlords/respondents

1st respondent present in person