



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL 72 OF 2009

SUPERIOR COMMERCIAL & SECRETARIAL COLLEGE.....APPELLANT

VERSUS

S. P. SHAH.....1<sup>ST</sup> RESPONDENT

G. SHAH.....2<sup>ND</sup> RESPONDENT

KIRTI SHAH.....3<sup>RD</sup> RESPONDENT

RULING

S.P Shah and two others (the Landlords) are the owners of the premises situate on **Title No. Nakuru Municipality/ Block 5/44** in which Superior Commercial & Secretarial College (the Tenants) are the Tenants. On 31<sup>st</sup> July, 2007, the Landlords and Tenant (Shops, Hotels and Catering Establishment) served the Tenant a tenancy notice seeking to increase rent from Kshs. 13,850/= to Kshs. 70,000/=. As would be expected, the Tenant filed a reference in the Business Premises Rent Tribunal (the Tribunal) opposing that notice. After hearing the case and considering the parties respective valuation reports, the Tribunal assessed the new rent at Kshs. 57,000/=.

Aggrieved by that increment the Tenants preferred this appeal and later applied for stay of execution of the Tribunal order increasing the rent arguing that it will suffer substantial loss if stay is not granted. As security for the due performance of the decree if the appeal is finally dismissed, they offered to pay to the Landlords monthly rent of Kshs. 23,062/= and deposit the balance of Kshs. 33,000/= in a joint account in the names of the parties' advocates.

The Landlords do not highly regard the Tenants' application. Their counsel submitted that the application for stay having not been made to the Tribunal under **Section 12(i)** of the Landlord.....Act Cap 301 of the Laws of Kenya as required by **Order 41 Rule 4** of the **Civil Procedure Rules**, this application is incompetent and should therefore be struck out. If overruled on that counsel submitted that the application should be allowed on such terms as are just.

Having considered this application and these rival submissions I am minded of granting this application. However, I agree with Mr. Kisilah for the Landlords that the Tenants should not be allowed to have their cake and eat it. The stay should be granted on terms that are just. The sum of Kshs. 23,062/= that the Tenants offered to pay as rent pending the hearing and final determination of the appeal is the amount the valuers gave as reasonable rent for the premises. To grant the application on the Tenants' terms will in the circumstances not be fair.

Taking into account the fact that the Landlords' valuers opined that reasonable rent for the premises should be Kshs. 72,000/=, I grant this application on condition that the Tenants shall with effect from 1<sup>st</sup> October 2007 pay rent of Kshs. 45,000/= per month and deposit the balance of Kshs. 12,000/= monthly in an interest bearing account in the joint names of the advocates for the parties.

I am mindful of the fact that this order saddles the Tenants with a huge sum in arrears in both the monthly rent and the deposit but the Tenants had better get used to some increment as do not think that the rent

payable is going to remain what it was before the increment. So that the grant of stay is not rendered futile by eviction resulting from the Tenants' inability to pay the arrears at once, the Tenants shall pay arrears in respect of the monthly rent along with the monthly rent by 12 equal monthly installments with effect from 30<sup>th</sup> June, 2009. The Tenants shall also deposit into the said joint account the arrears in respect of the deposits in 12 equal monthly installments from the same date. Needless to say that in default of payment of any of these sums on their due dates, this application shall stand dismissed with costs.

This to me appears to be a win-win situation. I therefore make no order as to the costs of this application.

**DATED and delivered this 17<sup>th</sup> day of June, 2009.**

**D.K. MARAGA**

**JUDGE.**