

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

CIVIL APPEAL 67 OF 2009

RICHARD OLUM OMOLLOAPPELLANT/APPLICANT

VERSUS

MARGARET NDUHU

GICHARURESPONDENT

R U L I N G

1. By a notice of motion dated 26th February, 2009, Richard Olum Omollo, (hereinafter referred to as the applicant), seeks an order staying execution of the orders issued by the Rent Restriction Tribunal on 4th February, 2009, pending the hearing of his appeal. The applicant who was a tenant in premises demised to him by the Landlady Margaret Nduhu Gicharu, (hereinafter referred to as the respondent), was on 4th February, 2009 ordered to pay Kshs.51,000/= together with costs to the respondent and deliver vacant possession by 28th February, 2009, or in default, be evicted from the premises. On 19th February, 2009, the applicant moved to this court and filed a memorandum of appeal against the judgment and order of 4th February, 2009.

2. In his affidavit sworn in support of the notice of motion dated 26th February, 2009, the applicant contends that he was unlawfully evicted from the suit premises on 18th September, 2008 but later managed to get back into the premises. The applicant maintains that the respondent's claim for rent is non-existence. He therefore prays for an order staying execution of the decree.

3. The respondent has objected to this application through a replying affidavit which was sworn on 12th March, 2009. The respondent has annexed copies of proceedings and judgment of the Rent Restriction Tribunal. **She maintains that the order of 4th February, 2009 was properly issued by the Tribunal after a thorough analysis of the evidence before it. The respondent maintains that the motion is just a gimmick to delay justice.**

4. I have carefully considered the application. The applicant's appeal which was filed on 16th February, 2009 was filed in time and does not require leave from this court. It is however apparent that the applicant delayed in coming to this court to seek an order for stay of execution. The orders sought to be stayed were issued on 4th February, 2009. There is no explanation as to why the applicant waited to come to court at the last minute just before he was due for eviction.

5. Secondly, the applicant has not demonstrated any substantial loss that he is likely to suffer if the order for stay is not granted. The case of *Francis Murithi Gituku t/a Gituku Enterprises and another vs Francis Mwaura Mweiga HCCA No.532 of 2007*, which was relied upon by the applicant's counsel is distinguishable as the suit premises were business premises wherein the applicant had been carrying out business for a period of over 30 years.

6. In this case, there is no issue of any substantial loss arising from loss of goodwill. I find that the applicant has failed to satisfy the requirements of Order XLI Rule 4(2) of the Civil Procedure Rules. There is no justification for the orders sought by the applicant and accordingly I dismiss the application with costs.

Dated and delivered this 12th day of June, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Agwara for the appellant

Ms Kinyua for the respondent