

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Appeal 13 of 2003

GIDEON ISIAHO INYANJE

APPELLANT

VERSUS

HASHAM LALJI PROPERTIES LTD RESPONDENT

RULING

This is an application under Order XLI Rule 4 and 6 of the Civil Procedure Rules for a stay of execution pending appeal.

The facts which gave rise to this litigation briefly may be stated. The Respondent is the registered proprietor of the premises known as **LR. NO. ELDORET MUNICIPALITY BLOCK 6/31**. By a Tenancy Agreement dated 24-5-01 the Respondent leased the premises to the Applicant at a monthly rental of Sh. 4,000/=. The Applicant sublet part of the premises to three (3) subtenants and was also in rent arrears.

On 9-4-02 the Respondent served the Applicant with notice terminating the tenancy with effect from 15-6-02. The Applicant declined to give vacant possession and made a reference to the Rent Business Premises Rent Tribunal being Cause No. 21/2002/22/2002 ELDORET.

Both parties appeared before the Tribunal testified and called witnesses. In the Tribunal the Applicant had conceded that he had sublet part of the premises to subtenants but that he had verbal consent from the landlord which consent was denied by the Respondent. He also conceded that he was in rent arrears. The Tribunal made a finding that the Applicant had sublet the Respondents premises without consent and that he was in rent arrears and dismissed the Applicant/tenant's reference with costs. The Tribunal further ordered the Applicant do render vacant possession within forty five (45) days.

The Applicant was dissatisfied with this Judgment and hence this appeal to this Court. He now applies for stay of execution pending appeal.

Mr. Omboto learned Counsel appearing for the Applicant submitted that if stay is not granted the Respondent will execute and the appeal if successful will be rendered nugatory.

While Miss Kosgei learned Counsel appearing for the Respondent submitted that the Applicant has not satisfied the requirements of Order XLI Rule 4 and 6 of the Civil Procedure Rules in that no security has been offered for the outstanding rent arrears. She further submitted that the appeal as filed has no chances of success.

The principles applicable to an application for stay of execution pending appeal are now well settled. Firstly, the Applicant has to show that the intended appeal is not frivolous, or put the other way round, he must satisfy the Court that he has an arguable appeal.

Secondly, it must be shown that the appeal if successful, would be rendered nugatory if the application

is not granted.

There is a long list of authorities on these principles but I only cite **REUBEN & 9 OTHERS VS. NDERITU & ANOTHER (1989) KLR 459** in which the Court of Appeal stated:-

“In such an application, the Applicant must show that the intended appeal is not frivolous or put the other way round, he must satisfy the Court that he has an arguable appeal. Secondly, it must be shown that the appeal, if successful would be rendered nugatory. See STANLEY MUNGA GITHUNGURI VS. JIMBA CREDIT CORPORATION LIMITED – CIVIL APPEAL NAI. 161 OF 1988.”

Applying the above to this application, I would say that I am not satisfied that the Applicant has satisfied the two conditions for granting of stay of execution stated above.

Accordingly the Applicant’s notice of motion is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 21ST DAY OF JULY, 2009.

J. L. A. OSIEMO

JUDGE

In the presence of:-