

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CIVIL APPEAL 25 OF 2009

GETEMBE HOSPITAL APPELLANT

VERSUS

MASABA FARMERS CO-OPERATIVE UNION RESPONDENT

RULING

The Affidavit Supporting this application does not state the nature of the dispute between the Applicant and the Respondent that the Business Premises Rent Tribunal was asked to decide on. It is not indicated what decision the Tribunal reached. No judgment or decree was extracted. From the Memorandum of Appeal annexed it appears the Applicant (which is a hospital) was given notice to vacate by the Respondent (which was the Landlord). It is apparent that the Tribunal upheld the notice and this is what aggrieved the Applicant and caused it to appeal.

I have indicated the foregoing because a party seeking stay pending appeal should be forthcoming on the facts of the case to enable the court to determine whether there is merit in the application. **Order XL1 rule 4(2)** of the **Civil Procedure Rules** requires the Applicant to show that he stands to suffer substantial loss, application has been brought without delay and that he has offered security for the due performance of the decree or order. The Affidavit in support stated the Applicant is an on-going hospital whose operations will be disrupted with dire consequences if stay is not granted. That may be true, but the court is unable to reach a settled finding in view of the scanty information.

The Tribunal decision was delivered on 10/2/09. Application was filed on 17/3/09. There is no delay. However, the Applicant offered no security at all. It did not even suggest that it will abide by any order as to security. In these circumstances the application cannot be granted. The same is dismissed with costs.

Dated, signed and delivered at KISII this 14th day of July, 2009

A. O. MUCHELULE

JUDGE

14/7/2009

Before A. O. Muchelule Judge

Mongare c/c

Mr. Makori for Mr. Masese for applicant.

Mr. Ayienda for Respondent

Court: Ruling in open court.

A. O. MUCHELULE

JUDGE