



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Appeal 872 of 2007**

**JARLIZCO HOLDINGS LTD.....APPELLANT/APPLICANT**

**VERSUS**

**MARKTON HOLDINGS LTD.....RESPONDENT/RESPONDENT**

**RULING**

The genesis of this litigation is a dispute over rent. The respondent is the registered proprietor of all that parcel of land known as LR No. 209/118/74 Lower Parklands Nairobi while the applicant is its tenant at a rental of Shs. 145,000/= per month. The respondent notified the applicant of its intention to increase the rent. The applicant filed a reference with Tribunal for the assessment of rent payable per month. Each party appointed a valuer who filed a report and rental assessment. The applicant's valuer assessed current market rent payable at Shs. 153,000/= per month exclusive while the respondent's valuer assessed the same at shs. 267,749.50 monthly rental. The Tribunal being guided by the two reports assessed the monthly rental at shs. 233,100/=.

The applicant being dissatisfied with the judgment of the Business Premises Tribunal delivered on 18<sup>th</sup> October 2007 preferred an appeal to the High Court. Simultaneously with the Memorandum of Appeal the appellant brought a Notice of Motion under certificate of urgency seeking stay of execution of the said judgment until the appeal lodged herein is heard and determined. The application is based on the grounds as stated on the body of the Notice of Motion and supported by an affidavit sworn by the applicant on 23<sup>rd</sup> October 2007. The application is opposed by the respondent who has filed a Replying Affidavit.

Mr. Kamau Kuria Counsel for the applicant submitted that the Landlord was awarded monthly rent of Shs. 233,100/= which was previously shs. 145,000/= and was backdated to 25<sup>th</sup> October 2005 which creates a debt of Shs. 1.9m unpaid arrears. The tenant has deponed that if the new rent were to be paid it will not be able to commercially operate.

Mr. Weda Counsel for the respondent submitted that the notice of motion seeking stay of execution under Order XLI Rule 4 is incompetent because there is no decree as envisaged under that order capable of being stayed. The Tribunal made an assessment and it is not a court capable of issuing a decree. Any determination by the Rent Tribunal must first be extracted and registered in the subordinate court of the first class which court would then issue an assessment as a formal court order as provided for under Section 14(1) of the Landlord and Tenant Act Cap. 301. Before that is done there is no decree and therefore the provisions of Order XLI Rule 4 of the Civil Procedure Rules cannot be invoked.

Section 14 (1) of the Landlord and Tenant Act provides:-

**“14 (1) A duly certified copy of any determination or order of a Tribunal may be filed in a competent court of the first by any party ..... And notice thereof being served on the Tribunal ..... such determination or order, subject to any right of appeal conferred by or under this Act be enforced as a decree of the court.”**

My understanding of this provision is that a certified copy of the determination or order of the Tribunal filed in court can be enforced as a decree and there is no requirement for extracting a formal decree. Mr. Weda further submitted that what the Tribunal did was to assess the rent which the tenant

ought to be paying which assessment was done on reference by the tenant.

This being an application for stay the court must have regard to the requirements of Order XLI Rule 4 (2) of the Civil Procedure Rules under which the applicant has to satisfy the court on two matters. First that substantial loss may result to the applicant unless the application is granted, which prima facie means that if the appeal succeeds, the Respondent would not be in a position to make full restitution. Secondly the applicant has to give such security as the court may order.

The applicant did not satisfy the court on either of these issues. That being so this application fails. It is therefore dismissed with costs.

Dated and delivered at Nairobi this 18<sup>th</sup> day of February 2008.

**J. L. A. OSIEMO**

**JUDGE**