

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 532 of 2007

FRANCIS MUREITHI GITUKU T/A GITUKU ENTERPRISES.....1ST APPELLANT

LOISE WANGUI MWANGI T/A JOHN'S CLUB.....2ND APPELLANT

VERSUS

FRANCIS MWAURA MWEGA.....RESPONDENT

R U L I N G

Francis Mureithi Gituku T/A Gituku Enterprises and Loise Wangui Mwangi T/A John's Club (hereinafter referred to as the 1st and 2nd Applicants) have moved this court by way of a Notice of Motion dated 20th June 2007 seeking orders that there be stay of execution of judgment and decree in Business Premises Rent Tribunal Nos. 335/05 and 336/05 (Nrb) (Consolidated) pending the hearing and determination of the Applicants' appeal against the said judgment.

The judgment subject of the appeal resulted in an order directing the Applicants to give the Respondent Francis Mwaura Mwega vacant position of the suit premises within one month from the date of the judgment to enable the Respondent carry out reconstruction and renovation of the premises. It is the Applicants' contention that if the judgment and decree is executed they will suffer substantial loss and it will be difficult to reinstate them in the premises even if the appeal succeeds. The Applicants contends that they have been carrying out business in the premises for over 30 years. It was contended that the eviction notice was in fact a contradiction of earlier orders issued by the High Court in HCCC. No. 426/05.

The Respondent objected to the Application contending that it was only meant to delay the Respondent from reaping the fruits of the judgment. It was maintained that the orders issued by the Business Premises Rent Tribunal were consistent with the orders issued in HCCC. No.426/05 which recognized that the Applicants were protected tenants and therefore subject to the jurisdiction of the Business Premises Rent Tribunal. It was maintained that the Applicants have already left the suit premises and the premises are now occupied by other persons and the Applicants have not therefore shown that they will suffer substantial loss. The affidavit sworn by the 1st Applicant was said to be different as there was no authority from 2nd Applicant to swear the affidavit. The court was urged to dismiss the application as there were no special circumstances justifying the granting of the orders sought.

I have carefully considered this application. The decree involves termination of a tenancy and eviction from the suit premises. It is evident that unless an order for stay of execution is granted, the parties position will be altered and Applicants will suffer substantial loss as it will not be possible for them to be restituted to the suit premises. The allegation that the Applicants have moved from the suit premises and sub-let it to other people is a contentious issue which remains unresolved.

For the above reason I find that it will be appropriate to grant order of stay of execution of the order made on the 24th May, 2007 pending the hearing and determination of the appeal. The orders of stay pending

appeal is conditional on the Applicants continuing to pay the rent as it falls due, and also depositing further security in the sum of Kshs.50,000/= within 7 days from today. The applicants shall also take appropriate action to have the appeal disposed off within 12 months.

Those shall be the orders of this court.

Dated, signed and delivered this 25th day of April, 2008

H. M. OKWENGU

JUDGE