

REPUBLIC OF KENYA

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

Civil Appeal 577 of 2008

EVA MUTHONI KARANJA.....APPELLANT

VERSUS

ANN WANJUE THIGA.....RESPONDENT

R U L I N G

Eva Muthoni Karanja (hereinafter referred to as the applicant), has filed an appeal against the orders of the Business Premises Rent Tribunal delivered on the 9th October, 2008 in BPRT Case No.755B of 2007. The applicant has now come to this court under Order XLI Rule 4 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, seeking to have execution of the order of the Tribunal stayed pending the determination of her appeal. The applicant has annexed a copy of the order to her affidavit filed in support of the application. The order indicates that the Landlord's notice was allowed and the tenant ordered to vacate the premises on 1st December, 2008. The applicant, who is the tenant, maintains that she has been carrying on business at the suit premises for a while, and has gained goodwill and clients. Therefore unless the order of stay of execution is granted, she will not only suffer substantial loss, but her appeal which she maintains raises weighty issues may be rendered nugatory.

The respondent Ann Wanjue Thiga, who is the Landlord, objects to the application maintaining that the applicant's appeal is frivolous, lacks merit and is only intended to deny her the fruits of her litigation. It is further contended that the applicant has not placed any material before the court in support of her contention that she will suffer substantial loss, if the order of stay of execution is not granted.

Having considered the contending arguments raised by the parties and the authorities which were cited, I am satisfied that the substratum of the applicant's appeal is her tenancy of the suit premises. If the order of the Tribunal is executed she will lose possession of the suit premises. If that happens there is a serious likelihood that the premises may fall into the hands of a 3rd party, and that will obviously render the applicant's appeal nugatory. Secondly, the premises being business premises, the possibility of the applicant suffering substantial loss if she is evicted from the premises is real. For these reasons, I find that there is justification for exercising my discretion in the applicant's favour. Accordingly, I shall stay execution of the order of the Tribunal made on 9th October, 2008, on the following conditions: -

- (i) That the applicant shall pay all outstanding rent and any rent due to the respondent within 7 days from today.
- (ii) The applicant shall continue paying rent to the respondent as it falls due on each subsequent month.
- (iii) The applicant shall file and serve a record of appeal within 60 days from the date hereof and take all necessary action to facilitate the speedy disposal of the appeal.
- (iv) If the appeal is not disposed off within 9 months from the date hereof, the orders of stay of execution shall stand dismissed unless otherwise extended by this court.

Those shall be the orders of this court.

Dated and delivered this 16th day of December, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the appellant absent

Jaoko for the respondent