



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Civil Appeal 78 of 2007

MARABA INVESTMENTS LIMITED APPELLANT

VERSUS

SUSAN CHEROP ALIAS SUSAN CHEROP KAAI.....RESPONDENT

RULING

The Appellant being dissatisfied by a Ruling made by the Chair Lady of the Business Premises Tribunal, Mrs. Mochache on 8th June, 2007 filed the present appeal on 6th July, 2007.

The Appellant had raised a Preliminary objection on a point of law namely, that the Respondent's Notice dated 31st October, 2006 to terminate the Appellant's tenancy was defective or invalid on the ground that the Respondent as a landlord has issued a previous Notice and which was in force at the time the Second Notice was issued. When the Second Notice dated 31.10.06 was issued, a Reference No. 6B was pending. Counsel for the Respondent stated that the said reference was dealt with and determined.

The Appellant now seeks an order of stay of proceedings in Eldoret B.P.T. Number 45 of 2006 which is set down for further hearing tomorrow, 18th July, 2007.

I have considered the application, the rival affidavits and Counsel's submissions. The Appellant has a right of Appeal under the provisions of Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Chapter 301.

Section 15 (1) provides:-

“Any party to a reference aggrieved by any determination or order of a Tribunal therein may, within thirty days after the date of such determination or order, appeal to the High Court:

Provided that the High Court may where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days, upon such conditions, if any, as it may think fit.”

The Appellant is apprehensive that its right of appeal and the appeal will be rendered nugatory if the order of stay of proceedings is not granted. The Appellant argued through Counsel that it was obliged to file the Appeal since Section 15 provides for 30 days within which to appeal.

I think that the grounds of Appeal set out in the Memorandum of Appeal appear to me to be arguable

and plausible. They are not vexatious. One of the grounds is whether the Respondent as landlord could issue a second Notice of termination of tenancy while another still existed and had given rise to a Reference which was pending. I think that such a point of law amounts to a jurisdictional issue i.e. whether the Tribunal could hear and entertain the Second Notice in such circumstances. The Appellant is entitled to have those issues heard on their merits.

I think that the Appellant was obliged to file the Appeal within the 30 days provided although the ruling was on a preliminary point of law. It was the safe thing to do otherwise it would have been time-barred. The decision of the High Court is final with regard to appeals from the Tribunals. As a result, the Appellant ought to exercise its right of appeal as provided by law.

I think that the Respondents will not suffer as much prejudice as the Appellant if the stay is not granted. The Appellant is still paying rent and there are no allegations of any breach of any terms and conditions of the tenancy. The urgency of the situation has arisen due to the landlord's own desire to take back the premises after the death of the registered owner. A landlord must contemplate that a tenant will resist such action which must be considered on merit and in accordance with the law.

The Appeal herein can also be prosecuted and heard within a reasonable period. I therefore do hereby grant prayer (c) of the Notice of Motion dated 6th July, 2007. Costs shall be in the Appeal.

DATED AND DELIVERED AT ELDORET ON THIS 17TH DAY OF JULY, 2007.

M. K. IBRAHIM

JUDGE

Ruling delivered in the presence of:

Mr. Nyachiro for the Appellant

Mr. Chemitei for the Respondent