



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

Civil Appeal 855 of 2007

NAJMA JIDALE.....)

MUNAA JIDALE.....) APPELLANTS/APPLICANTS

AZIZ JIDALE.....)

VERSUS

MOHAMMED ASHRAF.....FIRST RESPONDENT

UBEDI MOHAMMED.....SECOND RESPONDENT

RULING

The main prayer in the Chamber Summons dated 30th October, 2007 which the Applicants want this court to grant is prayer number 3 which states:

“THAT pending hearing and final determination of this appeal the Honourable court be pleased to order stay of execution of the order of the Honourable Chairman of the Rent Restriction Tribunal dated 31st July, 2007 directing the Appellant’s herein to vacate the suit premises by 31st October, 2007.”

This Chamber Summons is filed in the appeal said to be against “The Judgment/Decree of the Honourable Chairman of the Rent Restriction Tribunal delivered.....on 31st July, 2007 in RRT No.79, 78 and 77 of 2007.” Mr. Nyamweya appeared before me for the Applicants in this Chamber Summons who are the Appellants in this case, while Mr. E.O. Mitiambo appeared for the Respondents in the Chamber Summons and also in the appeal.

From what has been brought to my attention by the two learned counsel in the light of filed pleadings, I do hereby dismiss the Chamber Summon dated 30th October, 2007 with costs to the Respondents for the following reasons.

Firstly, the Applicants have not exhibited the orders complained of and said to have been made by the Chairman of the Rent Restriction Tribunal dated 31st July, 2007 or any such orders.

Secondly, the Applicants have not shown the nexus between the aforesaid Chairman’s Order dated 31st July, 2007 and the Judgment/Decree of the Chairman appealed from dated 31st July, 2007 which

have also not been exhibited thereby making it impossible for this court to see that the Applicant's appeal **"has merit with high chance of success"** as claimed by the Applicants in the grounds in support of the Chamber summons.

Moreover the useful and lawful legal effect of staying the Chairman's Order probably as seen in the Respondent's exhibit UMI, without also staying, the Chairman Judgment/Decree appealed from, if as seen in the Respondent's exhibit UM2, has not been brought to my attention.

Thirdly, the applicants have failed to convince me that the decision they have appealed against is a decision of the **"Chairman of the Rent Restriction Tribunal"** and not a decision of the Rent Restriction Tribunal consisting of the Chairman and two other members of the tribunal.

Fourthly annexures to the Respondent's replying affidavit cast serious doubt as to the existence of the orders and Judgment/Decree claimed by the Applicants to have been made on 31st July, 2007 whether by the Chairman or by the Rent Restriction Tribunal. Exhibit marked UM2 in the replying affidavit is the Judgment of the Rent Restriction Tribunal relevant in this matter. It was delivered and dated at Nairobi the 20th day of August, 2007. That Judgment gave the Applicants a period of 90 days with effect from **"1.8.2007 in which to look for alternative accommodation so as to vacate the premises by 31st October, 2007"** The Applicants who were found to be in rent arrears already were told **"To pay rent during the notice period"** but it appears they have also not paid that rent. They stayed in the premises until the last day of the 90 days period when they filed this Chamber Summons on 30th October 2007.

Further the orders of the Rent Restriction Tribunal signed by the Chairman but emanating from the judgment of 20th August 2007 aforesaid, was issued on 23rd August 2007. From the above, it follows that the orders the Applicants are talking about dated 31st July 2007 and the judgment/decree delivered on 31st July 2007 in this matter are not, to-date, known to this court as I am not seeing them up to now and properly in law therefore I should not grant an order of stay.

Dated and delivered at Nairobi this 5th day of December 2007

J.M. KHAMONI

JUDGE