

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 42 of 2006

DAVID IRUNGU.....APPELLANT

VERSUS

RICHARD WACHIRA.....RESPONDENT

R U L I N G

David Irungu the applicant seeks orders for stay of execution of the orders issued in respect of the judgment in BPRT Case Number 20 of 2006 Nyeri on 26th May 2000 and any other orders issued pursuant thereto. It is the Applicant's contention that He has been in occupation of the Business Premises subject of the dispute between him and the Respondent Richard Wachira (landlord) for the last 20 years and that He stands to suffer irreparable loss if evicted from the premises.

For the Respondent it was submitted that the application is defective as there were no orders issued on 26th May 2006. It is also submitted that the applicant has not shown that He will suffer irreparable loss and finally it is submitted that the applicant has not come to this court with clean hands as He has not disclosed that He has not paid the full rent due.

From the material placed before me it is evident that the applicant seeks an order for stay of execution of the order issued on 26th May 2006. A copy of the order has been availed wherein it is indicated that the order was given on 25th May 2006 and issued on 26th May 2006. I find that the application before the court is not defective.

It is further clear that the applicant having been a Tenant in the Business premises for a long time He will suffer irreparable loss in terms of good will if He is evicted from the business premises before his appeal is heard. With regard to the issue of rent arrears that can adequately be covered by a conditional order of stay of execution. I find that it is fair and just to grant a conditional order of stay of execution.

I therefore order that an order for stay of execution pending appeal shall issue on condition that the applicant shall pay all outstanding rent to the Respondent and shall continue to pay Rent as and when it falls due.

Should the Respondent refuse to accept the rent the same shall be deposited in this court.

Those shall be the orders of this court.

Dated, signed and delivered this 21st day of June 2006.

H. M. OKWENGU

JUDGE