

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Appeal 393 of 2005

SAMMY KARANJA APPELLANT
VERSUS
PROVIDENT ROCK INVESTMENT CO. LTD RESPONDENT

RULING

This is an application for stay of execution of the Judgment of the lower court pending the hearing and determination of the Appeal herein. It is made under Order 41 Rule 4 (1), (2) and (6) of the Civil Procedure Rules.

For the Applicant to succeed in this application he must demonstrate to the satisfaction of this Court that substantial loss will ensue if the Order is not granted; that he has filed this application without delay; and that he is willing and able to give such security as is ordered by the Court for the due performance of the decree. That is the plain reading of the Rule, and the onus is on the applicant to satisfy **all** the conditions through his deposition, and not through bold statements from the bar.

Now, let us examine if the Applicant has satisfied all the three conditions outlined above.

The application has been made in a timely manner. However, has the applicant demonstrated substantial loss, and has he offered any security?

In my humble view, the answer is No. The Applicant says that he is a “protected” tenant under the Landlord and Tenant (Shops and Hotels & Catering Establishments) Act, Cap 301, but has annexed absolutely no proof of his tenancy – let alone of the fact that he is a “protected” tenant. In fact, the basis of his eviction from the suit premises is the finding of fact by the lower court that he was not a tenant of the Respondent.

In the face of that clear finding, the least he could have done was to annex some proof of his tenancy. He has not done so, and I have no basis to grant him the orders sought. On the other hand, the Respondent has stated categorically that the Applicant was not a tenant, and his only role was to collect rents from other tenants.

Secondly, the Applicant has offered no security as is required under Order 41 Rule 4.

Accordingly, and for reasons outlined, this application is dismissed with costs to the Respondent, and the interim order is vacated.

Dated and delivered at Nairobi this 21st day of September, 2005.

ALNASHIR VISRAM

JUDGE