

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Appeal 483 of 2005

**ELITE STUDIOS LIMITED 1ST APPELLANT
PANA RATILAL SHAH T/A
CONTINENTAL OUTFITTERS 2ND APPELLANT
VERSUS
INTERCONTINENTAL HOTELS LIMITED RESPONDENT**

RULING

In this application, made under Order 41 Rule 4 of the Civil Procedure Rules, the appellants/Applicants seek to stay the execution of the Judgment of the Business Premises Tribunal (hereinafter “the Tribunal”) in BPRT Case Nos. 128 and 201 of 2003 (consolidated) pending the hearing and determination of this appeal.

The Appellants are aggrieved by the decision of the Tribunal to uphold the termination of the Appellants’ tenancy with the Respondent, and have appealed to this Court. That appeal was indeed filed within the time allowed by law. At this time they seek stay of execution.

For the Applicants to succeed in this application they must demonstrate to the satisfaction of this Court that substantial loss will ensue if the Order is not granted; that they have filed this application without delay; and that they are 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 applicants to satisfy all the conditions through their deposition, and not through bold statements from the bar.

The Appellants have argued that they have been the Respondent’s tenants for over 20 years, and if evicted, would suffer substantial loss, and that their appeal would be rendered nugatory. On the other hand, the Respondent wants the premises for its own use. At this time, I cannot go into the merits of the case, but must attempt to protect and balance the interests of both parties. Clearly, if the Applicants are evicted at this time, their appeals would be rendered nugatory, and they would suffer irreparable harm. On the other hand, the Respondent should not be kept waiting indefinitely for the determination of this matter.

Accordingly, I will order a limited stay of execution for four months from this date, and direct that the Record of Appeal be filed, served and the appeal be heard within the next four months. Meanwhile, the Applicants shall continue paying rent in Court. The Respondent shall be at liberty to apply for additional security, if it so wishes. Those shall be the Orders of this Court.

Dated and delivered at Nairobi this 20th day of September, 2005.

ALNASHIR VISRAM

JUDGE