

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 76 of 2003

HOTEL MARVELON LTD.....PLAINTIFF

VERSUS

BENSON MWANGI.....DEFENDANT

RULING

On 7/9/2005, the hearing of this case which was earlier consolidated with HCCC No. 193 of 2004 was adjourned because of two appeals which were filed by the defendant/landlord against some orders issued by the Business Premises Rent Tribunal and which appeals have to be disposed of before this matter is heard. However, counsel for the landlord had urged the court not to adjourn the hearing because the tenants were in arrears of rent amounting to almost Kshs.2 million. In the event that the court was inclined to grant the application for adjournment, counsel urged the court to make orders that would secure the landlord's rent. The tenants' advocates had told the court that the landlord was refusing to accept rent and several cheques which had been sent to him or his advocate had been returned to the tenants.

On the other hand, Mr. Okeke for the landlord said that only one cheque of Kshs.20,000/- was sent to his office sometimes in August 2005. The cheque was drawn in the name of his client and he could not accept the same in view of an existing order by this court that required that the rent be paid to the landlord directly.

On 4th June, 2004, this court found that the monthly rent that was payable by the tenants was Kshs.171,000/- because the tenants had failed to file a reference to the Business Premises Rent Tribunal to oppose a notice of increment of rent from Kshs.20,000/- to Kshs.171,000/- per month which had been served by the landlord. The court also ordered that the outstanding rent and future rents be paid to the defendant directly. Hitherto, the rent was being deposited in court at the rate of Kshs.20,000/- per month.

Subsequent to the said ruling, the tenants filed a notice of appeal against the said decision. They also filed an application in the Business Premises Rent Tribunal seeking leave to file a reference out of time and the said application was granted. The landlord was aggrieved by grant of the said leave and filed an appeal against the said decision. This is one of the appeals that caused the adjournment of this case.

I perused this court file to find out if the ruling of 4th June, 2004 was ever stayed and my finding was that there had been no such order. It is trite law that the pendency of an appeal is not a bar to execution of any order in a matter and the landlord is perfectly entitled to recover his rent using any lawful way if the tenants have defaulted in payment of the same. This is not an application for stay of execution and I cannot therefore say much more than I have already stated herein above as that might be prejudicial to the pending appeals. Suffice to state that a tenant's first obligation to a landlord is to pay his rent when it falls due and any court of law will frown upon any conduct on the part of a tenant which is intended to frustrate a landlord's right of receiving such rent.

As there is no substantive application before me, I decline to make any final orders except to state that the landlord is at liberty to employ any lawful means to recover his rent and if on the other hand the tenants wish to get any indulgence from the court, they should file an appropriate application for court's

consideration.

DATED, SIGNED AND DELIVERED at Nakuru this 13th day of September, 2005.

D. MUSINGA

JUDGE

13/9/2005

Ruling delivered in open court in the presence of Mr. Okeke for the defendant and Mr. Matiri and Mr. Waiganjo for the tenants.

D. MUSINGA

JUDGE

13/9/2005