



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Civil Appeal 7 of 2005**

**MOHAMED ABEID .....APPELLANT**

**VERSUS**

**ABDALLA AMEIR NASHI .....RESPONDENT**

**R U L I N G**

Mr. Kenzi advocate for the landlord filed a suit in Chief Magistrate's court claiming injunction against defendant and costs of the suit. The subject matter is some shop and butchery which the plaintiff claims are on his building. It is in the same premises that the landlord has issued a Notice to terminate tenancy under the provisions of Landlord and Tenant (Shops, Hotels and Catering Establishment Act Cap 301). It is not disputed that a suit has been filed in Business Tribunal.

Out of the proceedings in the subordinate court the applicant has filed an appeal against the ruling of the Learned Trial Magistrate on a Preliminary point on the issue of jurisdiction in the circumstances. There is no indication that this appeal is admitted.

However the appellant has filed this Motion seeking an order for Stay of the hearing of the said CMCC No.5079/2004 pending hearing of the appeal. Upon considering the matter, I am persuaded that unless Stay is granted the Appellant's appeal will be reduced nugatory. Jurisdiction to deal with disputes premises under the Act (Cap.301) is conferred on the Business Rent Tribunal and I am inclined to venture to say that this appeal has good chance of success.

For the reasons above I allow application and grant orders sought with costs.

**Delivered and dated at Mombasa this 15th Day of December 2005.**

**J. KHAMINWA**

**J U D G E**

15/12/05

Mr. Gichana

Mr. Kenzi

Ruling read in their presence.

KHAMINWA, J