



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA DISTRICT REGISTRY
(APPELLATE SIDE)
CIVIL APPEAL NO. 138 OF 2002

DHIRAJLAL DULLABHI LAXMICHAND.....APPELLANT

VERSUS

MOHAMED ABBAS MOHAMED HUSSEIN SOMJI...RESPONDENT

R U L I N G

This is an application for stay of proceedings, orders/decrees of the Rent Restriction tribunal in Rent Assessment case No. 56 of 1996 made on 16th and 22nd August 2002 on the grounds that the present appellant has filed an appeal which would be made nugatory. The Tribunal sits in sessions all over the country and is said to be coming back to Mombasa for April session. An injunction is also sought to stop the Respondent from altering the terms of appellant's tenancy until the appeal is heard.

In opposition the Respondent has filed grounds that the application is incompetent and the same has been overtaken by events and it is duplex. And furthermore the stay was granted by consent of parties in the Tribunal which stay has now expired. I have considered the submissions of both parties. There is no dispute that the applicant has a right of appeal. If order for stay is not granted the applicant/appellant would immediately lose his protected status under the Rent Restriction Act. The Respondent (landlord) would not suffer prejudice as he is receiving the rent assessment by tribunal at Sh.3,370 per month.

The proposal for a further increase of rent is subject to the arguments in appeal. There is no dispute on the payment of the rent ordered by Tribunal. The only stay that can be granted is the stay of further proceedings pending appeal and an injunction against the landlord restraining him from increasing rent pending the hearing of appeal. In the circumstances the application is allowed and orders granted under (ii) and (iii). Costs shall be in the cause.

Dated this 19th day of January 2004.

JOYCE KHAMINWA

J U D G E

19/1/04

Khaminwa – J.

Esther Clerk.

Mr. Kimani for Applicant.

Respondent not present

Date for today.

However the date for ruling was fixed in court. He is aware.

Mr. Kimani

I wish to inform court that the appellant expired after we argued the appeal.

Court:

Ruling to be read now. The appellants appeal is subject to the provisions of

Order 23 Civil Procedure as to substitution Ruling Read in open Court

In the presence of : Mr. Kimani.

JOYCE KHAMINWA

J U D G E

Dated this 19th day of January 2004.