

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 944 OF 2003

TERESIA KIMANI APPELLANT
VERSUS
GITHERE INVESTMENTS LIMITED RESPONDENT

RULING

This is an application for stay of execution of the Judgment of the Business Premises Tribunal in Case No 261 of 2002 made on November 21, 2003 pending the hearing and determination of this appeal.

In its Judgment, the Tribunal ordered the Applicant to vacate the suit premises by February 28, 2004. One day before that date, that is on February 27, 2004, the Applicant filed an application under Certificate of Urgency for an order that status quo be maintained pending the hearing and determination of her appeal.

That application was struck out as being incompetently before the Court. On April 21, 2004, the Applicant filed another application for similar orders, and this time prayed for stay of execution pending appeal.

In an application for stay under Order 41 Rule 4, the Applicant will succeed if he or she demonstrates to the satisfaction of this Court that substantial loss will ensue if the order of stay is not granted; that he has filed the application without undue delay; and that he has offered such security as may be ordered. The onus is to the Applicant to discharge the above through a deposition.

A stay order does not lie as a matter of course just because one has filed an appeal. One has to demonstrate the likelihood of suffering substantial loss if the order is refused. There is no evidence of substantial loss demonstrated in this application. The Applicant must also be willing to furnish security. There is no such offer made. Finally, the application must have been made without unreasonable delay. Here, the first application was made in this Court three months after the judgment was read. No explanation was offered for the delay.

All in all, I am satisfied that the applicant has not satisfied the conditions for stay outlined in Order 41 Rule 4, and accordingly the application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 26th day of May, 2004.

ALNASHIR VISRAM

JUDGE