



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL APPEAL NO. 48 OF 2004**

**KABUNDU HOLDINGS LTD.....APPELLANT**  
**-V E R U S**

**ALI K. AHMED t/a SKY CLUB RESTAURANT.....RESPONDENT**

**R U L I N G**

The Appellant has filed an appeal against the order of Lower Court (Hon. Jaden in CMCC.706/04). He now seeks to stay order dated 10/2/04 which was extended for a further 14 days on 24/2/04. The grounds advanced are that the Order 39(3)(2) Civil Procedure Code extension of ex-parte orders for more than 14 days and that no injunction is available against a landlord exercising his right to levy distress (Cap.293) and remedy for wrongful distress is in damages and that the tenancy between the parties is not controlled tenancy and that the Applicant has good chance of success in appeal. And Appeal will be rendered nugatory.

I have examined the record in the lower court. I find that in the affidavit Ali K. Ahmed the tenant sworn on 10/2/2004 he swears that there was rent due on from November 2003 and money was due Kshs.146,000/- and now the other quarter has come and gone and no rent has been paid.

I am of the view that there are strong chances of success in the appeal before High Court as alleged by Applicant.

I therefore allow the stay of the lower court injunction orders against the Applicant Landlord, meaning that the orders shall not restrain the Applicant from levying distress.

In case the Respondents are successful in the Appeal they will recover by the remedy of damages.

For the interest of justice exercising my inherent powers of court I hereby stay all proceedings henceforth in the said Lower Court Case No.706/2004 until determination of appeal.

Orders accordingly.

Costs in the cause.

**Dated at Mombasa this 6th day of May, 2004.**

**JOYCE KHAMINWA**

**J U D G E**