

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

APPEAL NO. 1 OF 2017

MARISANA WAKESHO & OTHERS APPELLANTS

VERSUS

MBOLOLO USHIRIKA LIMITED RESPONDENT

RULING

(Application seeking release of money held as security pending appeal; appellants filing appeal to contest assessment of rent by the Business Premises Rent Tribunal; order that pending appeal, the difference between the old and new rent be deposited and an escrow account opened; appeal dismissed; respondent clearly entitled to the money deposited; application allowed)

1. The application before me is that dated 19 May 2020. It principally seeks orders for release of money deposited in an escrow account in the joint names of counsel for the applicant and respondent. The money was deposited as security pending the determination of this appeal.
2. The history of the matter is that the applicant, who is the respondent in this appeal, and the appellants, had a rent dispute that went before the Business Premises Rent Tribunal (the Tribunal), with the appellants being tenant and the applicant being the landlord. The Tribunal assessed rent for each of the 9 appellants at varying rates. Aggrieved, they preferred an appeal to this court and also sought orders to stay the decision of the Tribunal pending hearing of the appeal. In a ruling delivered on 23 January 2018, the court ordered that an escrow account be opened, where the difference between the old rent and the new rent, would be deposited pending appeal. An account was subsequently opened at Gulf Bank of Africa in the joint names of counsel for the appellants and the applicant where the rent difference was deposited. The appeal was heard and dismissed vide a judgment delivered on 12 February 2020.
3. Through this application, the applicant now wants an order to have the money in the escrow account released to her.
4. There is nothing filed to oppose the application. I have no reason to deny the applicant the orders sought as the applicant is now entitled to all that money that was deposited in the escrow account given that the appellants' appeal was dismissed.
5. I therefore order that all the money deposited in Gulf Bank of Africa, Account No. 1600024501, be released to the law firm of M/s N.A Ali & Company Advocates, counsel for the applicant, who will remit the same to their client. Upon release of the money as directed above I further order that the account be closed.
6. I make no orders as to the costs of this application.
7. Orders accordingly.

DATED AND DELIVERED THIS 20 DAY OF JANUARY 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA