

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL APPEAL NO.55 OF 2003

W. OMBWA KOCHOLA APPELLANT

VERSUS

ODENY OWINO RESPONDENT

RULING:

The applicant applies for a stay of execution of Rent Tribunal Order delivered Kisumu on 21st March 2003. He also prays for Revocation of partial execution effected on 21st July.

The applicant was a tenant in a business premise of the Respondent in Migori where he had a chemist. The Respondent filed Rent Tribunal case No.34 of 1999 demanding rent arrears, Mesne profits and vacant possession.

Judgment was delivered on 21st May 2003. Inter alia applicant was ordered to pay rent arrears, mense profits and give vacant possession of the premiums with effect from 1st May 2003. Apparently he did not give vacant possession as directed. The Tribunal orders were adapted as judgment by SRM Migori. On 21/7/03 the applicant was evicted from the suit premises. He filed this application on 28th July 2003. It was submitted that the order extracted was wrong and that there was no proclamation before he was evicted.

Application was opposed and court told that it has been overtaken by events. By the time the application was filed applicant had already been evicted and now there are new tenants in the premises. There is therefore nothing to say.

Mr. Nyakango while replying changed the applicant's position. He admitted that the applicant was evicted from the premises. He prayed that the Respondent be stopped from executing for the outstanding rent arrears.

It is not in dispute that the applicant is no longer in the suit premises having been evicted on 21/7/03. The ruling by the Tribunal was clear in that he give vacant possession by 1/5/03. Apparently he did not do so and the respondent was with his rights to have him evicted two months later. There was nothing therefore wrong with the eviction. I therefore declare to order revocation of the execution.

Apparently the applicant has rent arrears he has not paid yet. He has filed an appeal against the ruling of the Tribunal. It will be fair and just to order stay of any further execution until the appeal is heard.

In the circumstances I allow the application to the extent that there should be no further execution until appeal is heard. Both Parties to maintain status quo. The applicant however should deposit the amount ordered – shs.38,000/= in an interest earning account in joint names of the two advocates within the next 15 days failing which the application will stand dismissed.

Costs in the appeal.

KABURU BAUNI

JUDGE.

20/7/04