

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
H.C. CIVIL CASE NO. 159 OF 1994

NAJMUDIN (NAJMI) KASSAM ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

SHAH & PATEL INDUSTRIES ::::::::::::::::::::::::::::::::::: RESPONDENT

RULING

Section 15(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap.301) (hereinafter referred to as “the Act”) provides as follows:

“Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the High Court.

Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit” From the face of the Memorandum of Appeal filed herein on January 15, 2004, the decision of the Tribunal appealed from is dated November 20, 2003. The appeal was, therefore, filed out of time. On the same day the appeal was filed, the Appellant also filed an application under Section 15 of the Act, Order XLI Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (Cap.21). In the application the Appellant sought, in the main, for leave to file his appeal out of time and for stay of execution of the Judgment and decree of the Tribunal against which he intended to appeal from. No ground or reason was offered in the application or in the supporting affidavit and not even in the supplementary affidavit filed on behalf of the Appellant as to why the appeal was not filed within the statutory period. At the hearing of the application, Mr. Issa Counsel for the Appellant did not even pretend to suggest that there was any reason why the appeal was not filed within time. I agree with Mr. Waiganjo, Counsel for the Respondent, that for one to be granted leave to appeal out of time, he must offer a sufficient reason as to why he did not file the appeal within time. The proviso to Section 15(1) of the Act itself stipulates so. There are numerous authorities on this point and I do not need to reproduce any here, even though Mr. Waiganjo cited one before me.

On the foregoing conclusion alone, I do not see any need to go into the issue of stay pending appeal or any other matter since the appeal itself is hopeless as it was filed out of time without any reason

and is hereby struck out with costs to the Respondent. The Respondent will also have the costs of the application. The interim order for stay entered herein is hereby vacated.

Dated and Delivered at Nairobi this 8th day of March 2004.

ALNASHIR VISRAM

JUDGE

