

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT NAIROBI
CIVIL APPEAL NO.911 OF 2003

MUNICIPAL COUNCIL OF KIAMBU :::::::::::::::::::::::::::::::APPELLANT

VERSUS

GEORGE MUREITHI GICHINGA ::::::::::::::::::::::::::::::: RESPONDENT

RULING

This is an application stated to be brought under Order XLI Rule 4(1) of the Civil Procedure Rules and Sections 3A and 4 of the Civil Procedure Act (Cap.21). In it, the Appellant seeks to stay the proceedings in Kiambu SPMCC No.242 of 2003 pending the hearing and determination of this appeal. The application was supported by the affidavit of Sylvester Kibera Maina, the Appellant's Advocate sworn on December 10, 2003.

Mr. Kibera for the Appellant argued that the lower Court did not have jurisdiction to entertain the suit resulting in the appeal. In the affidavit in support of the application, there was annexed a lease between the Appellant and the Respondent which Mr. Kibera said was in respect of property valued at more than Kshs 20,000,000 and attracted annual rent of Kshs 960,000/=. There was no valuation report shown to the Court to support Mr. Kibera's statement as to the value of the property. That aside, I think Mr. Kibera was completely misinformed in his argument. The subject matter of a suit can only be ascertained from the pleadings. Mr. Kimani for the Respondent argued that the claim in the lower Court did not relate to rents but concerned the legality of termination of the lease between the parties. Indeed that comes out clearly from the Appellant's pleadings annexed to the Replying Affidavit of Mr. George Mureithi Gichinga sworn on January 21, 2004.

It also emerged from the usual affidavits filed in this Court that Judgment had in fact been entered in the lower court against the Appellant before he obtained any relief in this Court. That being the case, I do not see what proceedings could be stayed when the trial in that court had in fact come to a conclusion. I agree with Mr. Kimani that the proper remedy available to the Appellant was to apply for stay of execution and not stay of proceedings. On these conclusions, I do not propose to express my view on the validity of the Affidavit filed in support of the appellant's application as nothing useful will be served thereby.

I, therefore, dismiss the Appellant's application dated December 10, 2003 with costs to the Respondent.

Dated and Delivered at Nairobi this 9th day of March, 2004.

ALNASHIR VISRAM

JUDGE