



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL APPEAL NO.145 OF 2001**

**MAAFRIKA WEIGHERS WAREHOUSE &**

**GENERAL TRADERS LTD ..... APPELLANT**

**VERSUS**

**LYDIA KAGUNDA JAPHETH ..... RESPONDENT**

**RULING**

The Appellant filed an application for stay of order of Business Premises Rent Tribunal relying on order 41 rule 4 Civil Procedure Code. The Tribunal order increased the rent payable by the Appellant from 2,500/- p.m. to 13,000/- p.m. effective from 1/8/2001. The appeal is against this increase of rent.

The grounds upon which the application is made is that the proposed appeal has excellent chances of success and it will be rendered nugatory if stay is not granted. And if the Appellant does not pay the accumulated arrears of rent he feels he will be evicted or landlord may levy distress. The provisions of Rule 4 Order 41 Civil Procedure Code requires that an applicant do show sufficient cause before an order can be granted. It is also a requirement that the court be satisfied that substantial loss may result if order is not granted and that the court shall not make any order unless security for the due performance of such decree or order as may ultimately be binding upon applicant is given. This matter being payment of rent in an existing tenancy I do not find that there is sufficient cause shown to grant stay. The applicant appears to say that he does not have funds to pay arrears of rent now accrued (Shs.52,000/-) and if this levy of distress was to be made he would have to close his business. He is therefore not in a position to give security for the payment of rent that in the event his appeal is not successful.

As for the merits of the appeal it appears the dispute relates to the Appellant's valuation which indicates a rental value of Shs.6,500/- p.m. and that of the landlord indicating Shs.15,300/- p.m. The Tribunal fixed the rent to Shs.13,000/- after examining two valuation reports. It is the principle involved in reaching that sum that is the main objection by the appellant. I can say that the appeal proposed has some grounds but not that it has overwhelming chances of success. On the other hand this is not a case of termination of tenancy and execution of decree will not render the appeal nugatory. The applicant has had notice of the increase for a long time and should have made some arrangements to clear the increase. In the event of success in his appeal it is possible to offset any overpayment against future rents. I do not therefore find that the applicant stands to suffer any substantial loss if order not granted.

On the whole I see no merits in this application. The same is dismissed with costs.

**Dated at Mombasa this 20th Day of March, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

Mr. Suchack.

Ms. Osino.

Mr. Suchak:

I ask for leave to appeal and a copy of proceedings.

Ms. Osino: No objection.

Court: The orders are granted.

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**