

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 7 OF 2002

HUSSEIN GULABKHAN & 10 OTHERS PLAINTIFFS

VERSUS

MARKET MANSION DEFENDANT

R U L I N G

The applicants are tenants of controlled tenancies under the Rent Restriction Act. They seek stay of Execution of the Tribunal order increasing the monthly rents payable quite substantially.

The application is by Notice of Motion under the provisions of Order 41 rule 4 of the Civil Procedure Rules. The supporting affidavit shows that the current rents range from 560/- to 1500/- per month and the increase brings all the rents between 3,000/- to 35000 to 4000/- and to 4500/- and finally the highest being Shs.5,000/- per month.

The applicants have filed appeal against this increase. They say they cannot raise such large sums of money and they hope that the tribunal order will be set on appeal aside. Also they say they will lose the protection afforded to tenants under the Rent Restriction Act.

The provisions of Order 41 rule 4 are clear. Sufficient cause must be shown for court order for judgment to be stayed. Filing an appeal is not sufficient cause. The applicant must show he will suffer substantial loss if the stay is not granted. Security must be ordered in case such stay is granted. In this case I find that it is substantial loss for a protected tenant who has been enjoying Rent Restriction under the Act will suffer substantial loss if his protection is taken away from him. Also there is an appeal which is a right. Can the Applicants furnish adequate security seeing that the appeal may be delayed. The landlord proposes that the only security viable is to order payment of rent as increased. Also that the appeal is not admitted yet.

I am of the view that once an appeal is filed it subsists until dismissed either summarily or after hearing. Also it is clear these applicants may not have the financial ability to meet the increased rent. I am persuaded therefore that order of stay may be granted. For security the applicants must furnish guarantors acceptable to the Respondent in the sum of Shs.100,000/- for each Applicant. Further the intended appeal must be prosecuted within the next twelve months from today. The application is allowed on those conditions. Costs shall await the appeal.

Dated at Mombasa this 20th Day of June, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in the presence of Mr. Kiume

Mr. Were

Mr. Kiume to be supplied with copies of proceedings and ruling upon
payment of copying charge.

J. KHAMINWA

COMMISSIONER OF ASSIZE