



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 139 OF 2001

S. M. MURAIMU1ST APPELLANT

DR. MBURU T/A GILGIL NEW TRADERS.....2ND APPELLANT

VERSUS

JOHN MWANGI.....RESPONDENT

RULING

This Ruling relates to an application brought through Chamber summons under Order XXI R. 22 of the Civil Procedure Rules (Revised) S. 3(A) of the Civil Procedure Act and all enabling provisions of the law. The application seeks the following order:

- That the Orders for stay granted and extended to 14th March, 2002 be extended until the hearing and determination of this appeal. The application is grounded on the following:

(a) That the respondent/landlord is threatening to attach the appellant's movable property and/or commit the appellants to civil jail.

(b) That the applicants have been paying their rents on time but the Respondent is insisting on the new rents given by the Tribunal which is subject matter of appeal.

(c) That the appeal is yet to be heard and determined and it would be unfair at this stage to demand payment of the new rents before the finalisation of the appeal or hearing of the application interparties.

(d) The grounds contained in the affidavit of Symon Muraimu and Dr. David Ndungu Mburu and other grounds to be adduced at the hearing.

The above application has been supported by the affidavit of one Symon Muraimu on behalf of both appellants. According to Ms Njoroge for the applicants, her clients have stayed on the suit premises since 1974. She complained that in 1998, the rent for the 1st applicant was increased from Kshs.1,5000 to Kshs.4,000. On the other hand, the rent for the 2nd applicant was increased from kshs.1,500 to kshs.4,100.

When the parties appeared in the Business Premises Tribunal – they were allowed to submit their Valuation Reports. Consequently, the Tribunal increased the rent to Kshs.9,400 Ms Njoroge described the increment as unconscionable and inordinately high. Besides the above, she also submitted that the

building is old and hence the current rent is not merited. According to her, the appeal has high chances of success. On the other hand, the respondent has opposed the application and has relied on the replying affidavit on the file. The respondent's counsel viz, Mr. Rodi has complained that since the judgment was delivered, the applicants have not paid their rents from July, 2001.

Secondly, Mr. Rodi also complained that there has been inordinate delay in filing the application which is being prosecuted after 3 years. He further submitted that the state of the building was described as fair and that similar buildings within the locality fetch rents from Kshs.9,000 upto Kshs.10,000. According to Mr. Rodi, the applicants will not suffer if the application is not granted. He also added that the appeal shall not be rendered nugatory if the orders being sought are not granted.

This Court has carefully perused the submissions and the respective affidavits on record. Without prejudice, the Court hereby notes that the increment of rent was rather sharp – and obviously, the applicants have an arguable appeal. That also means that the Court has a duty to grant the applicants a fair opportunity to proceed with the appeal.

Despite the above, the applicants are still under obligation to pay the old rents till the appeal is determined. The total circumstances of this case dictates that the balance of convenience is in favour of the applicants.

The upshot is that the application is hereby granted. In the meantime, the applicants are hereby ordered to deposit all the rent arrears to the Court within 60 days for onward transmission to the respondent. These rents will be calculated at the old rates before the Tribunal imposed new rents. Costs in the cause.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open Court in the presence of Mr. Mariti for Ms Njoroge for applicants.

MUGA APONDI

JUDGE

13TH NOVEMBER, 2003