

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 25 OF 1999

PAULINE WANJA MUORIA.....PLAINTIFF/RESPONDENT
-VERSUS
EDNA CHERONO BORE.....DEFENDANTS/APPLICANT
RULING

The applicant in this Chamber Summons is asking for leave to appeal against the Ruling of this court made on 25-1-2001 and for a Stay of Execution of these Orders pending the said appeal. The applicant is asking that in the alternative a Stay be granted until the expiration of the next 4 months. The application is supported by the grounds that the school is operational with 160 pupils and that the applicant will suffer substantial loss if the pupils are evicted abruptly. This application is opposed on the ground that the applicant has not made any offer of settling the outstanding rent and that there is no evidence that he will be in a position ever to repay the rent now and after the appeal.

In my ruling of 25.1.2001, I made reference to the question of the applicant running the business of a school in these premises. I noted that he has not been paying the rent since 1999.

I also pointed out that even though it is a school with children this did not operate as a license for the applicant to continue the use of the premises without paying rent on the excuse that the children will suffer if there is execution to follow the ruling. The school is run as a business, it is not run as a charitable organization where fees is not paid. In short the applicant makes profit and he has a major obligation to pay for the rent. If as it appears he has no intention of ever paying the rent, the next option is to make immediate arrangements to distribute these children to other schools. He claims that there are 160 children. This is a small number, which would present no difficult in distributing into other schools.

In considering whether to give a stay of execution, I am required to see whether substantial loss may result if the stay is not granted and that the application is made without delay.

In my ruling I found that the applicant has not been paying the

rent using unacceptable excuses. In this application he has not come with any offer except to say that the children and the name of the school will suffer if the stay is not granted. I do not think that this is what was envisaged by the Provisions of Order 41 of the Civil Procedure Rules.

The applicant simply wants to perpetuate his occupation of the premises without paying rent. He has not shown any evidence that the Landlady will not be in a position to repay his money if he succeeds in his appeal. I find no sufficient reasons to warrant me giving a stay of the execution.

The applicant has not made any efforts to pay the rent but I note in his affidavit he is asking as an alternative that he be given 4 months in which to distribute the children to other schools. I would notwithstanding my finding accede to this request on the condition that the outstanding rent is paid to the landlady's advocates within 7 days of today's date. This means that a stay of 4 months is granted on condition that the outstanding rent is paid within 7 days.

Costs of this application to the Landlady in any event.

Delivered and dated this 14th day of February, 2001

KASANGA MULWA
JUDGE