



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

APPEAL NO 40 OF 2020

ABUBAKAR YUSUF.....APPELLANT/APPLICANT

VERSUS

SAMIR ABDULWAHID MIRAN.....RESPONDENT

RULING

(Application for stay pending appeal; appeal from decision of the Rent Restriction Tribunal which increased rent from Kshs. 1,500/= to Kshs. 7,000/=; application allowed subject to the applicant paying the old rent and depositing the balance of the new rent in a joint interest earning account or in court)

1. The application before me is that dated 29 January 2021 filed by the appellant. It seeks the following orders :-

(a) Spent (certification of urgency).

(b) That there be stay of proceedings in RRT (Assessment) No. 21 of 2016 pending hearing and determination of the application interpartes/appeal or further orders of the court.

(c) That the appellant do deposit accrued rent at the rate of Kshs. 1,500/= per month in court or pay to the respondent or to any entity as may be directed by the court.

(d) That the Honourable Court do grant any relief(s) it deems just and expedient to meet the ends of justice.

(e) That the costs of the application be provided for.

2. To put matters into context, the appellant/applicant is the respondent's tenant in certain premises. The applicant was paying rent of Kshs. 1,500/=. There appears to have been a dispute over the rent payable which dispute was referred to the Rent Restriction Tribunal (RRT). The Tribunal rendered its decision on 20 November 2020 vide which it assessed rent at Kshs. 7,000/=. Aggrieved by this assessment, the applicant has preferred an appeal to this court principally complaining that there was no basis for such assessment. Together with the appeal, the applicant filed this application.

3. The application is supported by the affidavit of the applicant. There is deposition that there was a delay in him procuring the proceedings and further that he is ready to pay the old rent of Kshs. 1,500/= but the respondent is unwilling to accept the same. He thus seeks a stay of execution.

4. Despite being served, the respondent has not filed anything to oppose the motion.

5. This being an application for stay of execution pending appeal, I stand guided by the provisions of Order 42 Rule 6 (2) which is drawn as follows :-

“No order for stay of execution shall be made under sub rule (1) unless—

a. the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay; and

b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him

has been given by the Applicant”.

6. Three issues thus stand out being :-

- (a) That the application has been made without unreasonable delay.
- (b) That the applicant demonstrates that he stands to suffer substantial loss; and
- (c) Security for the due performance of the decree.

7. I will not dwell too much on the issue of delay. The decision was made on 20 November 2020. This application was filed on 4 February 2021. The applicant has tried to explain the delay by stating that he did not get the proceedings of the court despite requesting for them. I will give the applicant the benefit of doubt on this score and consider the delay as explained. I will go straight away to the issue of substantial loss and security.

8. I am ready to grant the applicant stay pending appeal if he pays to the respondent the old rent of Kshs. 1,500/= every month, and deposit the balance, which is Kshs. 5,500/= in a joint interest earning account to be held by the respondent and counsel for the applicant, or if this is not possible within 14 days of this ruling, deposit the same in court every month until this appeal is heard and determined. If the respondent refuses to receive the old rent of Kshs. 1,500/= as it has been alleged by the applicant, then even this Kshs. 1,500/= be deposited in the joint interest earning account or in court within the time frames directed above. The said deposits be made on or before the 5th day of every month. If there will be default for any one month, then the respondent will be at liberty to demand and execute for the whole rent of Kshs. 7,000/= as ordered by the Tribunal and it will be as good as if there is no subsisting stay pending appeal.

9. I make no orders as to costs since the respondent did not oppose this application.

10. Orders accordingly.

DATED AND DELIVERED THIS 21ST DAY OF SEPTEMBER 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA