



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC APPEAL NO. 80 OF 2019

SIMON WAHOME.....APPLICANT

VERSUS

SIMON WAWERU MACHARIA.....RESPONDENT

RULING.

1. This is a Ruling in respect of a Notice of Motion dated 25th March 2020 in which the Appellant/applicant seeks stay of execution pending appeal. The Applicant was a tenant of the Respondent in a business premises erected on plot No.1144/515 Naivasha.
2. The Respondent gave the Applicant notice to terminate the tenancy on the ground that the Respondent wanted to occupy the premises for a period of more than one year. The Applicant moved to the Business Premises Rent Tribunal where he filed a reference.
3. The Applicant's reference was heard fully and in a Judgement delivered on 20th September 2019, the Applicant's reference was dismissed and the Respondent was allowed to terminate the tenancy. The Applicant was given until 1st April 2020 to vacate the premises failing which he be evicted. This is what prompted the Applicant to file this application before this court.
4. The Applicant contends that the Appeal he has filed has high chances of success in that the notice to terminate was issued out of malice in that the Applicant had differed with the Respondent in a bar and that the Respondent had threatened him with eviction.
5. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 12th April 2021. The Respondent denies the Applicant's claim that he filed the application late as there were ongoing negotiations to settle the matter out of court.
6. The Respondent contends that the issue of differences between him and the Applicant were fully considered by the Tribunal Chairperson who found that the notice to terminate the tenancy was not given in bad faith and that he had a firm intention to use the premises for his own business. The Respondent argues that the Applicant had been given sufficient time to obtain alternative accommodation.
7. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the oral arguments by counsel for the parties during the hearing of the application. The only issue for determination is whether the Applicant has met the threshold for grant of stay pending appeal.
8. Order 42 Rule 6(2) of the Civil Procedure Rules is clear on the conditions to be met. Firstly, an application has to be brought without unreasonable delay. Secondly, the Applicant has to show that if stay is not granted, he will suffer substantial loss. Thirdly, there has to be security given as may be binding upon the Applicant.
9. In the instant case, the impugned judgement was delivered on 20th September 2019. This application was filed on 25th March 2020. This application was filed six months later. The Applicant has tried to explain the delay by alleging that there were negotiations going on. This allegation has been denied by the Respondent. I therefore find that the Applicant's application was filed after an inordinate delay which has not been explained.
10. The Applicant has not demonstrated that he will suffer substantial loss if stay is not granted. The Applicant's argument seems to be that he could not move to another premises due to Covid 19. The situation has now improved and Covid 19 is no longer an excuse for re-location. I do not want to deal with the chances of success of the Appeal as to do so will appear that I have pre judged the Appeal itself. I find that the Applicant has not demonstrated that he will suffer substantial loss if stay is not granted.
11. The issue of security is normally considered in a case where demonstration of substantial loss is shown. I therefore find that the Applicant's application has no merits. I proceed to dismiss the same with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF NOVEMBER 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

MR MAKHANDIA FOR APPELLANT/APPLICANT

MR AUNGA FOR RESPONDENT

COURT ASSISTANT: MERCY

E.O. OBAGA

JUDGE