



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**MISC. CIVIL APPLICATION NO. 14 OF 2018**

**MARY WAMAITHA MWANGI.....TENANT/APPLICANT**

**VERSUS**

**JOHN GITHENDUKA MACHARIA.....LANDLORD/RESPONDENT**

**R U L I N G**

1. By the application dated 27/3/2018 the applicant prays that there be stay of execution of the judgment delivered vide Eldoret BPR No. 7/2016 on 25/8/2017 pending the determination of this application and thereafter the intended appeal. The applicant has equally applied for an extension of time to file appeal out of time.
2. The application is premised on the affidavit of the applicant sworn on the even date. She has deponed that all along she has been a tenant of the respondent from 1/9/2012. The respondent after expiry of the period issued termination of tenancy notice which prompted her to seek protection from the Business Premises Rent Tribunal . The said tribunal issued its judgment on 25/8/2017 which ordered her to vacate the premises by 1/04/2018.
3. According to her the court file went missing and thus efforts to trace the same for filing the appeal bore fruits on 2/3/2018. She has argued therefore that based on factors beyond her ability, she was not able to file the appeal within time.
4. The respondent on his part has filed a replying affidavit dated 5/4/2013 as well as grounds of opposition. He deponed that the applicant has come to court with unclean hands as all along she was represented when the tribunal delivered its judgment. That in any case the applicant has defaulted in rent payments and has generally been intolent.
5. The appellant has filed a rejoinder attaching what she has termed as evidence showing payments of rent upto date.
6. I have carefully perused the application herein together with the relevant responses as well as the parties submissions. The question is whether the application has been brought inordinately late and whether the appeal has any chance of success prima facie.
7. I shall dismiss this application on the two sole grounds. First of all I think the same has been brought inordinately late. I have perused the tribunals proceedings and its clear that the application before the tribunal was filed by the applicant herein. Secondly and more fundamentally one Mugambi held brief for Okara whom I belief was the counsel acting for the applicant. I do not see any sufficient or convincing reason why the applicant had to wait for close to 8 months to make this application.
8. In any case there is no evidence that her counsel or herself immediately communicated to the registry of her desire to have the copy of the judgment. The letter attached to her application dated 2/3/2018 came too late in the day and it does not convince me that she was not aware of the tribunals decision.
9. Secondly, looking even at the history of the matter and the decision of the tribunal I do not think the applicant's appeal would have seen the light of the day for the simple reason that the lease period had expired and all that the applicant was holding on was nothing really. She cannot deny the usage of the property to the landlord. Payment of the rent without default does not necessarily mean that the tenancy cannot be terminated.
10. Consequently I shall dismiss the application with costs to the respondent.

**Delivered, signed and dated at Kitale tis 14<sup>th</sup> day of May 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**14/5/18**

**In the presence of:**

**Khisa for Respondent**

**Teti for the Applicant**

**Court Assistant – Kirong**

**Ruling read in open court.**