



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL APPEAL NO 339 OF 2012**

**LILIAN WANJIKU MACHARIA.....APPELLANT**

**V E R S U S**

**CHARITY MUKAMI NJAGI.....RESPONDENT**

**RULING**

In this application (**Notice of Motion dated 15<sup>th</sup> December 2015**) the Appellant seeks the main order that the Respondent be arrested and committed to civil jail for a period of six (6) months for failing to deposit rent as ordered by this court (Onyancha J.) on 2<sup>nd</sup> April 2014 amounting to Kshs. 935,000/- as at December 2015. The Appellant also seeks orders that the Respondent be compelled to deposit the entire rent or that she be allowed to recover the rent arrears. The application is based on the grounds that the orders issued by the court ought to be complied with; that the Respondent is enjoying the premises for eighteen (18) months without paying rent to the detriment of the appellant; that the respondent has deliberately and intentionally refused to deposit the rent as ordered by the court; that the Respondent does not comply with orders of this honourable court and has failed to comply with the same; that the respondent has breached terms of the said order. The application is supported by the affidavit of LILIAN WANJIKU MACHARIA.

The Respondent has opposed the application through replying affidavit sworn on 6<sup>th</sup> April 2016 by Charity Mukami Njagi and grounds of opposition filed on 8<sup>th</sup> March 2016. The challenge emanating therefrom include –

- i. That the application is incurably defective, bad in law and ought to be struck out.
- ii. That it has no basis in fact and there is no clear case nor has it satisfied the requirements laid out for grant of the orders sought.
- iii. That the applicant has not furnished the Court with adequate or sufficient evidence to establish the allegations of fact being raised.
- iv. That she has not defaulted from paying rent intentionally but has been frustrated by the Appellant as she only operates one third of the business space allocated to her resulting in minimal profits.
- v. That even the minimal profits she gets has been used to pay a loan she had sourced from a financial institution for purposes of constructing rooms which the Appellant maliciously destroyed.

vi. That since the court ruling on the stay application was delivered the appellant has been frustrating her business by blocking the sewage thereby driving away her patrons.

vii. That she is willing to pay all the rent if the appeal herein is dismissed for inordinate delay in prosecution and given an opportunity to do so.

viii. That she is only running the business to avoid losing all that she has invested in it leaving her with no financial resources.

I have considered the submissions of the learned counsels appearing. I have also perused the court record.

In the ruling of the court delivered on 2<sup>nd</sup> April 2014 Hon. Justice Onyancha had the following to say –

**“In the above circumstances the court is persuaded that a stay of execution of the lower court order would be issuable on the following conditions.**

### **ORDERS**

**1. Stay is granted until appeal is determined.**

**2. Appeal shall be prosecuted within the next 7 months in default of which, the stay shall stand automatically discharged.**

**3. Any rents payable in the meantime with effect from 1<sup>st</sup> February 2014, shall be deposited in court until the appeal shall be determined.”**

The substantive appeal is against orders by which the Respondent’s application before the lower court was granted, allowing her to continue constructing permanent structures on the rented premises belonging to the Appellant-the landlord without her consent.

While it is true that the contempt application at hand does not satisfy the requirements of the grant of the orders sought, it is also clear that both the Appellant and the Respondent disobeyed express orders of this court to prosecute the appeal expeditiously within seven months on the part of the Appellant and to pay the outstanding arrears of rent, or even deposit the same in court on the part of the Respondent. The Respondent has concurred that she did not obey the court order but cites frustration by the appellant yet she had not seen the need to seek the court’s intervention on that issue. She could also have sought from the Registrar to have the appeal placed before a Judge in chambers for dismissal.

In default of prosecution of the appeal or payment of the rent to court, the stay orders stood automatically discharged. The court will be loath to exercise its discretion in favour of a litigant who does not appear to have any respect for court orders. I will in the event refuse the application. It is dismissed with costs to the Respondent. It is so ordered.

***Dated, signed and delivered at Nairobi this 9<sup>h</sup> Day of November, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**