



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NUMBER 100 OF 2013**

**STEPHEN ATALLO NYAMANGA. .... APPLICANT/APPELLANT**

**VERSUS**

**ANCHOR INVESTMENTS LIMITED. .... RESPONDENT**

**RULING**

The application before the court is the Notice of Motion dated 19<sup>th</sup> March, 2013 filed by the appellant herein. The application seeks mainly a stay of execution pending the final determination of the appeal.

The facts show that the appellant is the tenant of the Respondent in Flat No. 38(N) on L.R. No. 1/822, Nairobi. He paid rent of Ksh.25,000/- until 8<sup>th</sup> February, 2013 when the Business Premises Rent Tribunal, on the Landlord's application ruled that the rents, based on fresh valuation shall be ksh.41,000/- per month, with effect from the date the Reference to the Tribunal was made. These findings aggrieved the Tenant who as a result filed this appeal.

In this application for a stay of execution, an interim order of stay was granted on condition that the applicant/appellant continues to pay the undisputed monthly rent of Ksh.25,000/- with a further order that the Appellant do deposit in court Ksh.144,000/- which was the possible, arrears then unpaid being the difference between the ordered new rent of Ksh.41,000/- and the old rent of Ksh.25,000/-.

It is trite law that a stay of execution is generally granted if the applicant satisfies that a substantial loss may result to him unless the order is made and that not only was the application itself timeously made but that a proper security was offered by the applicant.

I have observed that this application was made within five or so weeks after the Tribunal's order was made. I find no much delay in that period considering that the prescribed time for appeal from the Tribunal is four weeks.

The issue of great importance in this case is the one as to whether the applicant/Appellant in this case is likely to suffer a substantial loss if the stay is not granted. It is not in dispute that execution, if one was not stopped from taking place, would simply force the appellant to pay the new rent of Ksh.41,000/- per month – an extra Ksh.16,000/- until the appeal is determined. How would such higher monthly rent cause substantial loss to the Appellant if he wins the appeal and the monthly rent remains at Ksh.25,000/- per month? The court's view, is that all that may happen is that the Appellant will have overpaid the rents. Such overpaid rents can be ordered refunded to the Tenant within a prescribed period. On the other hand, the court can calculate the overpaid rents to be advance rents for the tenant, while probably taking into account the element of interest, if material.

To put it differently, the applicant in this case has not demonstrated that if the stay of execution sought herein is not granted he will stand to incur substantial loss. He failed to show that the respondent will not either refund the then overpaid rent or will not to give proper credit for the overpaid rent as advance rents.

The court further observes that the Appellant's proposal for the possible new rent arising from a proper present valuation of the occupied premises were ruled as unreliable or poorly done. The Appellant accordingly, gave no alternative proposal for new and up to date rents for the premises. The Tribunal and this court until the appeal is argued accordingly look at the Tribunal's findings as the most reasonable

probable proposal for the new rents.

The end result is that the court finds this application for stay of execution as unmerited and dismisses it with costs. Orders accordingly.

Dated and delivered at Nairobi this 6th day of February 2014.

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**D A ONYANCHA**

**JUDGE**