



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NUMBER 551 OF 2007

FRANCIS KAMAU KANGETHE.

PETER MURIITHI KUNGU

SAMUEL KARIUKI MWAURA

JOSEPH MUIGAI KAMAU

PETER NJUGUNA CHOMBA

PATRICK KARIUKI MWANGI

NEWTON MUKORA

MARGARET WAIRIMU NJAGA

MARY KARUGI T/S MIORO GENERAL STORES

BIBIAN NJERI CHEGE.....APPLICANTS

VERSUS

MAKENAGIRA FARMER'S TRADING COMPANY LTD.....RESPONDENT

R U L I N G

By a Notice of Motion dated 19th March, 2014, the Applicants who were the Tenants before the Business Premises Rent Tribunal in case No. 12 of 2011 (as consolidated), sought orders of stay of the Proclamation and subsequent attachments of their goods through a distress for rent. They, ex parte, obtained relevant interim orders before this court on 25th March, 2014.

Thereafter, the matter was canvassed inter partes and the question before the court is whether the applicants should obtain temporary stay of the levying of distress for rent, until the appeal is heard and finally determined.

On the 25th March, 2014 when the court gave interim orders, it also ordered that the Tenant's/applicants, who had deponed that they withheld no arrears of due rents, to file a supplementary affidavit to show total rents payments made for the period March, 2012 and end of February, 2014. The

court observes that such supplementary affidavit was filed on 4th April, 2014 and the same depones that Joseph Muigai Kamau, Muriithi Kungu and Njuguna Chomba had cleared their arrears of rent up to an inclusive of February, 2014.

To the above Supplementary Affidavit, the Respondent/Landlord through its Chairman James Waithaka Waweru, filed a replying affidavit, showing that, notwithstanding some payments made and deposited in court as ordered by the court, the Tenant/Applicants, have about Ksh.845,050/- arrears still outstanding which can only be recovered through a levy of distress for rents.

I have perused the material upon which this application for stay is based. I have also carefully considered the said material and the submissions made thereon from both sides.

The court will grant the orders sought only if it is satisfied that substantial loss or damage will occur to the applicant unless the order is granted. It will also consider whether this application was made without unreasonable delay and that the applicant may have offered sufficient security to be held up for the performance of the applicants' obligations, if any, if he/it is finally found liable to perform the obligation.

The court found that up to and including 10th April, 2014, the applicants had deposited in court a total sum of Ksh.654,810/-. Taking into account the fact that the monthly total rent payable is Ksh.207,270/-, they ought to have deposited in court a total sum of Ksh.2,487,240/- between 13th March, 2012 when deposit order was made, and 10th April 2014 when they made their last deposit. That period alone accordingly shows a difference of arrears of rent of about Ksh.832,430/-. Notwithstanding that fact, the Applicants' swore to the effect that they owed no arrears of rent. They in the court's opinion, were trying to mislead the court. They held and came to court with dirty hands seeking a favourable discretion of this court. In the court's view, the applicants' do not deserve a favourable discretion from the court if the court takes into account their conduct before and when they came to court.

In addition, the Applicants' indeed clearly appear to owe a substantial amount of unpaid rents. They cannot expect this court to protect them from the consequences of the breach of their contract with their landlords.

In the circumstances, this application to stay levying of distress for arrears of rent, has no merit. It is hereby dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 9th day of June, 2014.

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D A ONYANCHA

JUDGE