

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO 207 OF 2013

JOHN OYAMO AIRO..... APPELLANT

VERSUS

MOSES ABWOGI INYANYA.....RESPONDENT

R U L I N G

1. The Appellant is the Respondent's tenant in business premises situated within Nairobi. The tenancy is controlled under the *Landlord and Tenant (Shops, Hotels & Catering Establishments) Act, Cap 301 (the Act)*.
2. In a judgment dated and delivered on 22nd March 2013 the *Business Premises Rent Tribunal* (the **Tribunal**) upheld the Respondent's notice to terminate the tenancy served upon the Appellant on 1st October 2012. The notice was to take effect on 1st January 2013 but the Tribunal extended the date to 1st May 2013. The notice had been given upon the ground of persistent delay in paying rent.
3. The Appellant exercised his undoubted right of appeal by lodging the present appeal. He also applied by **notice of motion dated 29th April 2013**, in effect, for stay of execution of the judgment of the Tribunal pending disposal of the appeal. The Respondent opposed the application.
4. I have read the affidavits sworn in support of the application (the supporting and also a supplementary affidavit) and the replying affidavit filed in opposition. I have also considered the submissions of the learned counsels appearing and perused the court record.
5. The appeal was lodged on 22nd April 2013. But there do not appear to have been any discernible steps taken by the Appellant towards preparation of the appeal for hearing.
6. The notice to vacate was to take effect on 1st January 2013. We are now approaching the middle of October 2013. The Tribunal was satisfied, upon evidence placed before it, that the Appellant was a persistent defaulter in paying rent as and when it fell due. Even before this court it transpired on 2nd July 2013 when this application was canvassed that the Appellant was in arrears of rent for the months of May, June and July 2013.
7. The Appellant's right of appeal cannot be a right to perpetuate a tenancy when he has been in persistent breach of one of the cardinal obligations of a tenant – payment of rent as and when it becomes due.
8. I am not satisfied, upon the facts of this case, that the Appellant stands to suffer substantial loss unless the order sought is granted. The application must be refused; it is dismissed with costs to the Respondent. The interim stay of execution now in place is hereby lifted. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF OCTOBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 11TH DAY OF OCTOBER 2013