



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 100 of 2012

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of Subordinate Court case*

BUSINESS PREMISES RENT TRIBUNAL

- 3.1 *Orders of tribunal ordering tenant to vacate
Premises by 1st August 2012.*
- 3.2 *Leased premises LR No. 209/11413/1214
Old Nation House.*
- 3.3 *Application for stay of tribunal orders.*
- 3.4 *Appeal filed 13th March 2012*
4. *Application dated 16th March 2012*
 - 4.1 *Applicant aggrieved with ruling.*
 - 4.2 *Eviction to take effect 1st August 2012.*
 - 4.3 *Eviction if undertaken would effect
business.*
5. *In reply*
 - 5.1 *The issue of arrears of rent arises.*
 - 5.2 *Returned cheque of Ksh. 4,680,000/- unpaid.*
 - 5.3 *HCCC 368/04 and HCC 854/04 pending after*

Being filed and seeking injunction orders to restrain respondent from levying distress of rent.

5.4 *Applicant occupies premises, sub-divided and is not person running business. No loss would occasion.*

6. *Held:*

i) *Applicant granted on condition Ksh. 500,000/-, cash or banker's guarantee or insurance guarantee is deposited in an interest earning account.*

7. *Case Law:*

a) *Iye Mohammed Bakari*

Vs

Maweni Estates Ltd

2006 eKLR

Njagi J

b) *Wilson Gitu Muniu*

Vs

Auctioneers Licensing Board

[2007] Eklr

Nambuye J

8. *Advocates :*

i) *S.M. Nderitu instructed by M/s Kariuki Muigua & Co Advocates for appellant/original tenant*

ii) *P.S. Kisaka instructed by M/s P.S. Kisaka & Co Advocates for respondent /original landlord*

VERSUS

SAYANI INVESTMENTS LTD RESPONDENT/ RESPONDENT

(Being an appeal against a Ruling delivered by D. Mochache, Chairperson – Business Premises Rent Tribunal dated on 17th February 2012 in

Case No. 309/11 at Nairobi)

R U L I N G

Application Stay of Execution

Dated 16th March 2012

I. INTRODUCTION

1. The Business Premises Rent Tribunal gave orders that the applicant appellant/original tenant M/s Cancer Investment Ltd do give vacant possession of premises LR No. 209/11413/1214 Old Nation House by 1st August 2012.
2. The appellant being aggrieved filed an appeal to this High Court. Pending that appeal being heard, the applicant/tenant prayed there be a stay of execution of those orders.

II BACKGROUND

3. The applicant/tenant alleged that they have been tenants in the premises for 10 years. The issue that arose between the parties was that of accounting. The respondent landlord was restrained from interfering with their quiet possession.

Then they (tenant) did file two cases at the High Court being

HCCC 368/04 and HCCC 854/04 for injunction. The cases were to restrain the respondent from levying distress.

4. Regardless of these two High Court cases filed, the respondent obtained orders for their eviction on 17th February 2012. That the applicant/tenant do vacate the said premises.
5. Being aggrieved, the applicant/tenant filed appeal on 13th March 2012. They further filed an application Notice of Motion 16th March 2012 seeking for stay of execution of the orders of the tribunal court.

III APPLICATION 13TH MARCH 2012

6. The applicant stated that after being in the premises for 10 years. Being now asked to vacate the premises, would mean that the business would be affected. That pending the appeal the orders of vacant possession be stayed.
7. In reply, the respondent stated that the appellant has arrears of rent. They have Ksh. 4,680,000/- in

an unpaid cheque, although the applicant/tenant argued that they had already made good the said cheque.

8. The respondent took issues of the loss that may incur the tenant. The tenant had sub-divided the premises to smaller business and sublet. The person running the businesses is not the applicant per se and therefore no loss would be occasioned.

III OPINION

9. The applicant/tenant has two other High Court cases pending on the same matter. That the applicant/tenant stated that he would lose in the business profits and good will if vacant possession/eviction is undertaken. All they wish is for the stay of the orders so that they may be heard on appeal.

10. The substantial loss has not been proven and or shown, has been the argument by the respondent.

11. From the submissions before court the issue of the rent calculation if established and proved to be correct would most certainly affect the loss to the appellant/applicant tenant if stay is not granted.

12. I am of the view that the application has been brought without inordinate delay. That substantial loss may occasion.

13. As to the issue of security, it is only just and fair that this be provided to the respondent. The applicant argued that from past authorities of the High Court, it was not always a requirement of security to be provided.

14. This court herein finds that security be so provided at the sum of Ksh. 500,000/- in cash or banker's guarantee or insurance guarantee. That this cash be deposited and or filed in an interest earning joint account of both parties within 90 days.

15. That this appeal be heard expeditiously.

16. There be liberty to appeal by either party.

DATED THIS 12TH DAY OF JULY 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

i) *M/s S.M. Nderitu instructed by Kariuki Muigua & Co Advocates
for appellant/original tenant*

ii) *M/s P.S. Kisaka instructed by P.S. Kisaka & Co Advocates
for respondent /original landlord*