



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 5 OF 1998

KANTILAL VIRPAL SHAH

T/A BEHNLS EDUCATION

SUPPLIES.....APPLICANT

versus

BENJA PROPERTIES LIMITED.....RESPONDENT

R U L I N G

This is an application by way of Notice of Motion seeking a stay of the orders of this Court made on 30th March, 1998 pending the filing and determination of an appeal in the Court of Appeal.

The judgment of this court delivered on 30th March, 1998 followed an appeal from the decision of the Business Premises Rent Tribunal.

The learned counsel for the respondent in this application has given Notice of preliminary Objection to the effect that no Appeal lies on a matter from the Business Premises Rent Tribunal. The court therefore lacks jurisdiction to hear and determine the present application.

Both learned counsel have addressed me on the substantive application. However, as the preliminary point relates to jurisdiction I deem it necessary to deal with it first. This is because, I can only address the application on its merits if I have the jurisdiction so to do. If I do not have the jurisdiction I cannot deal with the merits of the application.

The relevant provisions are to be found in section 15 of the Landlord and Tenant (Shops, Hotels and Catering establishments) Act Cap 301 Laws of Kenya. The relevant parts thereof read as follows:

“15(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may.....appeal to the High Court..... (2).....  
(3)..... (4)The procedure in and relating to appeals in Civil matters from subordinate Courts to the High Court shall govern appeals under this Act: Provided that the decision of the High Court on any appeal under this act shall be final and shall not be subject to further appeal.”

The learned counsel for the applicant has submitted that the foregoing provision of law should be given a liberal construction and find that the court has jurisdiction to grant stay as the applicant has a right of appeal. He cited:

(1) Re a Company (1980) 1 All E.R. 284

(2) East African Community -v- Republic (1970) E.A 457 and

(3) Mudavadi -v- Kibisu & Another (1970) E.A 585

I have read those authorities and related the same to the provisions of Section 15 of Cap. 301 aforesaid.

The applicant has already exercised the right of appeal conferred by section 15(1) aforesaid. The High Court has made a decision thereon. The proviso to section 15(4) of the Act is stated in such finality that even a liberal construction would be misplaced. I consider it important to emphasize some of the words in that proviso. The decision of the High Court on “any appeal” under this act “shall be final” and “shall not” be subject to “further” appeal. The words are mandatory and conclusive. There is no ambiguity left. They are unequivocal.

With respect, therefore the decision of this court made on 30th March, 1998 was final. No further appeal lies. I would therefore agree that this court has no jurisdiction to address the present application. I therefore decline to grant the orders sought. I recognise the fact that I may be wrong in my finding and since I am not the final arbiter, if leave is needed to move to the Court of Appeal the same is granted. Provided that the applicant shall exercise that right within the next three days. The respondent shall have the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 28th day of April, 1998.

A. MBOGHOLI MSAGHA

JUDGE