

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPL. NO. 1066 OF 1998

ZAKAYO MAKUMI.....PLAINTIFF
VERSUS
MAINA GITHAIGA.....DEFENDANT

R U L I N G

In an application for a stay pending appeal, the applicant has a duty to show substantial loss shall result if the order is not granted, that the application has been made without unreasonable delay and security may be ordered for the due performance of the decree or order which may ultimately be binding on the applicant.

In the present application no appeal has been filed as, according to the applicant's counsel, no proceedings have been received. It is common knowledge that in matters of eviction the issue of reinstatement is easier said than done and in most cases the preservation of the status quo is the best cause of action. On the same principle, where it appears distress is unlawful it is not enough to say that the remedy lies in damages. Where there is adequate security restitution will be ordered. The present application was filed within one week from the refusal by the Business Premises Tribunal to order stay pending appeal.

There was no delay. There is evidence that the applicant remitted the rent by way of money orders to the respondent. That cannot be a conduct of a serial defaulter. Security on the other hand can be in the form of continued payment of the monthly rent until the appeal is heard and finalised.

Accordingly the application succeeds. There shall be a stay as prayed until the appeal is heard and finalised. The applicant shall continue to pay rent to the respondent on the old terms. Costs shall be on appeal.

Orders accordingly.

Dated at Nairobi this 28th day of October 1998.

A. MBOGHOLI MSAGHA

JUDGE