

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, TUNOI & LAKHA, J.J.A.)

CIVIL APPLICATION NO. NAI. 179 OF 1998 (68/98UR)

BETWEEN

HAIRCARE BEAUTICIANS LTD.APPLICANT

AND

STANDARD PROPERTIES LTD.

CAPITAL TRUSTEES LTD.RESPONDENTS

**(An application for stay of execution in an intended appeal
from a Ruling of the High Court of Kenya at Nairobi
(Justice Kuloba) dated 17th June, 1998**

in

H.C.C.C. NO. 2494 OF 1997)

RULING OF THE COURT

This is an application under rule 5(2)(b) of the Rules of this Court for a stay of execution of the Order of superior court (Kuloba, J.) given on 17th June, 1998 giving Possession of the suit premises to the Respondents.

The applicant conducts the business of a hairdressing college in the suit premises and on 24th March, 1998 Hayanga, J. had made a consent order. The applicant made payment under the consent order albeit out of time but it was accepted by the landlord. Yet the landlord having accepted the payment sought to evict the applicant. Clearly the applicant is aggrieved and asks for a stay pending appeal.

This application was to the knowledge of the respondent as Mr. Balala rightly concedes and the applicant was evicted as the respondent stole a march over the process of the Court by evicting her before this application was heard. This Court will not sit back and encourage conduct, unlawful or wrongful as a passport to favour.

We are satisfied that the applicant has an arguable appeal and it will be rendered nugatory if stay is not granted. In all the circumstances, we are satisfied that this is a fit case for the exercise of our discretion.

Accordingly, we order that a mandatory injunction do issue against the respondent restoring possession of the suit premise to the applicant forthwith. There will be a stay as prayed pending the hearing of the intended appeal. Costs to abide the appeal.

Made and delivered at Nairobi this 23rd day of July, 1998

R.O. KWACH

JUDGE OF APPEAL

P.K. TUNOI

JUDGE OF APPEAL

A.A. LAKHA

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR