



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**

**ELC SUIT NO. 88 OF 2016**

TONY MUGAMBI.....1<sup>ST</sup> APPELLANT  
MUSILA NTHENGE.....2<sup>ND</sup> APPELLANT  
HARRISON MWATU.....3<sup>RD</sup> APPELLANT  
LISBON KABUE.....4<sup>TH</sup> APPELLANT  
FLORENCE MANDEGWA.....5<sup>TH</sup> APPELLANT  
FRANCIS NAIBEL.....6<sup>TH</sup> APPELLANT  
MARY OSENA.....7<sup>TH</sup> APPELLANT  
MARGARET KAKALA.....8<sup>TH</sup> APPELLANT  
JOHN MUNYENDO.....9<sup>TH</sup> APPELLANT

**VERSUS**

**1. DANIEL MACHARIA**

**2. MAINA WANJIGI.....RESPONDENTS**

**RULING**

At all materials times the appellants were tenants of the respondents in respect of the premises known as L.R No. 209/12125, Shauri Moyo, Nairobi on which they occupied 2 bedroomed flats(hereinafter referred to as “the suit premises”) on a monthly rent of Kshs.2,000/-. The appellants’ tenancies were subject to the provisions of the Rent Restriction Act, Chapter 296 Laws of Kenya. On 8<sup>th</sup> June, 2011, the appellants filed a suit at the Rent Restriction Tribunal (“hereinafter referred to only as “the tribunal”) against the respondents seeking damages for unlawful increase of rent and an injunction restraining the respondents from evicting them from the suit premises. The respondents raised an objection at the tribunal that the tribunal had no jurisdiction to entertain the appellants’ suit. Following this objection, the tribunal directed that the Standard Rent for the suit premises be assessed. The tribunal’s valuer assessed the Standard Rent for the suit premises at Kshs.15,000/- per month while the appellants’ valuer assessed the Standard Rent at Kshs.2000/- per month. A third valuer who was engaged by the respondents assessed the Standard Rent at Kshs.12,000/- per month.

On 5<sup>th</sup> April, 2016, the tribunal after considering the three valuation reports held that the suit property did not fall within the ambit of the Rent Restriction Act, Chapter 296 Laws of Kenya and as such the tribunal had no jurisdiction to determine the suit that was brought before it by the appellants. The tribunal advised the parties to seek redress elsewhere.

It is against that decision that the appellants brought the present appeal in which they have contended that the tribunal erred in assessing the Standard Rent for the suit premises at Kshs.15,000/- per month instead of Kshs.2,200/- per month in accordance with the valuation report that was submitted by their valuer at the tribunal. Together with the Memorandum of Appeal, the appellants filed an application by way of Notice of Motion dated 28<sup>th</sup> October, 2016 seeking an order to restrain the respondents from increasing rent or evicting them from the suit premises pending the hearing of the appeal. The application was amended on 2<sup>nd</sup> December, 2016 to correct the land reference number but the prayers in the application remained the same. The application was brought on the grounds that after the tribunal held that the appellants were not controlled tenants, the respondents had served them with notices increasing their rent from Kshs.2,000/- per month to Kshs.15,000/- per month for each flat occupied by them with effect from 1<sup>st</sup> December, 2016. The appellants averred that the respondents advised those

who found the new rent unacceptable to vacate the suit premises.

The appellants averred that the increase in rent from Kshs.2,000/- to Kshs.15,000/- was excessive and harsh. They averred that the new rent was unaffordable to them. The appellants averred that unless the appellants were restrained from increasing rent for the suit premises they stood the risk of being evicted from the suit premises in which event their appeal would be rendered nugatory.

The application was opposed by the respondents through a replying affidavit sworn by the 1<sup>st</sup> respondent on 8<sup>th</sup> February, 2017. The respondents averred that the monthly rent of Kshs.2,000/- paid by the appellants for the suit premises was uneconomical to the respondents and that the tribunal was right in assessing Standard Rent at Kshs.15,000/- per month. The respondents contended the appellants had continued to pay monthly rent at the rate of Kshs.2,000/- despite the fact that the Standard Rent had been assessed at Kshs.15,000/-. The respondents averred that the appellants had not explained how they would compensate the respondents for the lost rent which is the difference between the monthly rent of Kshs.2,000/- which they were paying and Kshs.15,000/- that was assessed as the Standard Rent. The respondents averred that the appellants' appeal had no substance and that the same was a scheme hatched by the appellants to deny the respondents the market rent for the suit premises which they deserved.

I have considered the appellants' application together with the affidavit filed in support thereof. I have also considered the replying affidavit that was filed by the respondents in opposition to the application and the submissions by counsel. The prayers sought by the appellants in their application were not happily worded. What the appellants wanted from the court was an order staying execution of the decision of the tribunal made on 5<sup>th</sup> April, 2016 which is the subject of this appeal. Although the appellants brought their application correctly under Order 42 Rule 6 of the Civil Procedure Rules, no stay order was sought. Instead, the appellants sought an order restraining the respondents from increasing rent and from evicting them from the suit premises.

The appellants' application was for all intents and purposes an application for stay and I will treat it as such. The law on stay of execution is settled. As rightly submitted by the appellants, Order 42 Rule 6 of the Civil Procedure Rules prohibits the court from granting an order of stay of execution unless:

- (i) Substantial loss would be suffered by the applicant if the order is not granted;
- (ii) The application has been brought without unreasonable delay; and
- (iii) Security has been furnished by the applicant for the due performance of the decree or order sought to be stayed.

I am satisfied from the material before the court that the appellants would suffer substantial loss unless the stay sought is granted. The tribunal made a finding that the appellants are not controlled tenants under the Rent Restriction Act, Chapter 296 Laws of Kenya. The effect of that finding is that the respondents are now at liberty to increase rent for the suit premises to any amount they may wish to charge. The respondents have so far increased the rent from Kshs.2,000/- to Kshs.15,000/- per month. The appellants have contended that they are unable to pay the new rent and that the only other option that has been given to them by the respondents is to vacate the suit property. In the circumstances, the appellants stand to lose their tenancies on the suit premises unless the decision of the tribunal is stayed. The appellants would no doubt suffer substantial loss if the stay sought is not granted. I am also satisfied that the appellants brought the stay application without unreasonable delay. On the issue of security, the appellants indicated in their submission that they were willing and ready to furnish such security as the court may direct.

Due to the foregoing, it is my finding that the appellants have satisfied the conditions for granting stay of execution. Consequently, the appellants' Amended Notice of Motion application dated 2<sup>nd</sup> December, 2016 is allowed on the following terms;

1. The ruling and orders made by the Rent Restriction Tribunal on 5<sup>th</sup> April, 2016 in Nairobi Rent Restriction Case No. 193 of 2011 are stayed and the respondents are restrained from increasing rent for the premises known as Flat Numbers F1 to F9 on L.R. No. 209/12125 or evicting the appellants from the said premises pending the hearing and determination of this appeal.
2. Each of the appellants shall deposit in a joint interest earning bank account in the names of the advocates on record for the parties a sum of Kenya Shillings Five Thousand (Kshs.5,000/=) per month as security with effect from 10<sup>th</sup> February, 2019 and on the 10<sup>th</sup> day of each subsequent month until the determination of the appeal or further orders by the court. This payment shall be made in addition to the normal monthly rent payable by the appellants to the respondents for the suit premises.
3. In the event that the appellants or any of them defaults in the payment of the said sum of Kshs.5,000/= on the due date, the stay order granted herein shall stand automatically discharged in respect of the appellant/s in default.
4. The costs of the application shall be in the cause.

**Delivered and Dated at Nairobi this 31<sup>st</sup> day of January 2019**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

Mr. G. Maina for the Appellants

Ms. Nyabuto h/b for Gakoi Maina for the Respondents

Mr. Okumu-Court Assistant