



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
ELCLA E076 OF 2024

BURGER CHEF LIMITED.....
APPELLANT

VERSUS

APA INSURANCE LIMITED.....
RESPONDENT

RULING

- 1) The Appellant /Applicant filed a Notice of Motion dated 6/06/2024 in which it sought orders of stay of execution pending appeal. The Applicant contends that it has preferred an appeal against the Judgment of The Business Premises Rent Tribunal on 9/05/2024 in **E 953 of 2022 Burger Chef Limited vs APA Insurance Limited**. The Applicant further contends that if execution is carried out it will suffer substantial loss and that the appeal will be rendered nugatory.
- 2) The Respondent has opposed the application based on a Replying Affidavit sworn on 19/06/2024. The Respondents

contend that the application herein lacks merit because the Tribunal reached a fair decision after analyzing all the evidence presented before it by both parties, which included assessment of monthly rent payable save for the effective date which was to be 1st December 2022.

- 3) That the Applicant will not suffer any substantial loss. Even if the appeal succeeds, since the Applicant is a tenant in the suit premises then the higher rent paid shall be credited to the Applicant. Further that since the valuation done by the Applicant pegged the rent at Kesh 64,600 and the Respondent's valuation placed the monthly rent at Kesh 176,770, there is only a difference of Kesh 112,170 and so the Appellant cannot be said to be contesting the whole Judgment since the valuations show that indeed the rent payable deserves to be increased. That the Appellant should then be contesting only the difference of Kesh 112,170.
- 4) I have considered the Applicant's application as well as the opposition to the same by the Respondent. The principles for grant of stay pending appeal are very clear. First the application must be brought without unreasonable delay. Second, there has to be demonstration of substantial loss and third, there has to be such security provided for the due performance of the decree as may ultimately be binding upon the Applicant.
- 5) In the instant case, the Decree appealed against was passed on 9/05/2024. This application was made on 6/06/2024.

There was therefore no unreasonable delay. This is a money decree. A money decree would not render an appeal nugatory. The rent increment was about Kshs.112,170/= on top of what the Appellant's valuation showed as the rent to be paid in the area where the suit premises are. There is no evidence that if the increased rent was paid and the appeal succeeded, the Respondent will not be in a position to pay. In any case the Respondent has already stated that they will but credit the Applicant's account for rent if the appeal succeeds.

6) As already stated, the Applicant is a tenant of the Respondent so if the appeal succeeds, the Respondent can give rebates in rent or even refund. There is no suggestion that the Respondent will be unable to refund. Demonstration of substantial loss is the cornerstone for grant of stay pending appeal. In the absence of this and given that this is a monetary decree, I do not see how the appeal will be rendered nugatory. I therefore find no merit in the Applicant's application which is hereby dismissed with costs to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 16TH DAY OF OCTOBER, 2025.

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**MOGENI J
JUDGE**

In the presence of:-

Ms. Kimani holding brief for Mr. Ochieng for the Appellant

Mr. K. Ochieng for the Respondent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**

ORIGINAL