



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO.11 OF 2018**

**PABABRI HARIKRISHNA PREMJI**

**T/A PRAMUKH SUPPLIES.....PROPOSED APPELLANT**

**VERSUS**

**VELJI KIMJI MAROO.....PROPOSED RESPONDENT**

**RULING**

The Applicant brought the application dated 25/1/2018 seeking orders to stay execution of the judgment/decree given in **BRPT No. 400 of 2015** which was delivered on 24/11/2017, pending hearing and determination of the appeal. The Applicant also seeks leave to appeal out of time against the whole judgment of the Hon. Mbichi Mboroki, Chairman of the Business Premises Rent Tribunal (BPRT) delivered on 24/11/2017 at Nairobi.

The application was opposed by way of the Respondent's Replying Affidavit sworn on 19/3/2018. The Respondent deponed that the Applicant was not vigilant in pursuing the judgment due after the BPRT indicated that it would deliver judgment on notice. The Respondent further deponed that judgment notices from the BPRT are not sent to parties but the practice is that such notices are usually posted on the BPRT notice board, and that judgements are usually read on Fridays only.

The court has considered the application and the response to the application together with the annexures and the law applicable. It is not disputed that this matter was heard and determined by the BPRT and that upon conclusion, the tribunal directed that the judgment would be delivered on 17/10/2017 and a judgment notice be served upon the tenant's advocate. On that day, both parties were in court but the judgment was not ready and the BPRT directed that it would deliver the judgment on notice. The Applicant contended that he was not served with the judgment notice, which was not controverted by the Respondent who confirmed that the judgment notice was posted on the BPRT notice board and that it was not served on the Applicant or its advocate.

There is no indication as to when the notice of judgement was put up on the BPRT notice board or when it was removed. It cannot be said with certainty that the Applicant had notice of the date of delivery of the judgment. Further, the BPRT order given on 8/9/2017 clearly shows that the tenant's advocate was absent when judgment was delivered. The Applicant's evidence that he learned of the judgment when he was served with the letter dated 12/1/2018 is therefore uncontroverted.

The Applicant's advocate wrote to the Executive Officer of the BPRT on 22/1/2018 requesting for typed proceedings in order to pursue an appeal on behalf of the tenant. This application was filed on the 25/1/2018. It is apparent from the correspondence that the Applicant's advocate filed the present application immediately he learned of the judgement. The delay has been explained, it is not inordinate. It was occasioned by the fact that the tenant's advocate was not served with the judgment notice, hence he was absent when the judgment was delivered.

The Applicant filed a draft Memorandum of Appeal, to demonstrate that he has an arguable case. The court grants the Applicant leave to appeal and extends time to the Applicant to lodge his appeal out of time. The Applicant is directed to file the record of appeal and serve it on the Respondent within the next 30 days.

On the prayer for stay, the court notes that the Applicant relied on Order 50 rule 5 of the Civil Procedure rules. Be that as it may, the application is for all intents and purposes an application for stay and the court will treat it as such. Under Order 42 Rule 6 of the Civil Procedure Rules, the court has discretion to grant an order for stay of execution where substantial loss would result to the applicant if the order is not granted; the application is brought without unreasonable delay, and the Applicant furnishes security for the due performance of the decree or order sought to be stayed.

The court is satisfied that the Applicant would suffer substantial loss unless the stay sought is granted. The BPRT made a finding to increase the rent payable by the Applicant to Kshs. 120, 000/= from Kshs. 70, 000/= with effect from 1/7/2015. The Applicant is likely to suffer substantial loss if the stay sought is not granted. The Applicant intimated his readiness to furnish such security as the court may direct.

The Applicant has satisfied the conditions for the grant of stay of execution.

The judgment/decree of the BPRT delivered on 24/11/2017 in **Nairobi Business Rent Tribunal Case No. 399 & 400 of 2015** is stayed pending the hearing and determination of the intended appeal.

The Applicant shall deposit in an interest earning bank account to be opened in the joint names of the advocates for the Applicant and Respondent the sum of Kenya shillings two Million (Kshs. 2,000,000/=) within 30 days of the date of this ruling as security. The Applicant shall also deposit in the joint interest bank account Kenya Shillings fifty thousand (Kshs. 50, 000/=) per month with effect from 10/4/2019 and on the 10<sup>th</sup> day of each subsequent month until the determination of the appeal or further orders of the court. For the avoidance of doubt, the Applicant shall continue to pay the current rent to the Respondent, over and above the sum of Kshs. 50,000/= he is to deposit into the joint account every month.

In the event that the Applicant fails to deposit the sums of Kshs. 2, 000,000/= or the monthly sum of Kshs. 50, 000/= as directed by the court, the stay orders granted herein shall stand automatically discharged.

The orders made here shall apply to **Miscellaneous Application Number 12 of 2018**. The costs of the application shall be in the cause.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of March 2019**

**K.BOR**

**JUDGE**

**In the presence of:-**

Ms. N. Mogaka holding brief for Mr. Kandere for the Applicant

Mr. V. Owuor-Court Assistant

No appearance for the Respondent