



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**CIVIL APPEAL NO. 1 OF 2017**

**MARISANA WAKESHO & OTHERS.....APPELLANT/APPLICANT**

**-VERSUS-**

**MBOLOLO USHIRIKA LIMITED.....RESPONDENT**

**RULING**

1. The appellants/applicants filed the notice of motion dated 13<sup>th</sup> February 2017 under the provisions of Order 22 rule 25 of the Civil Procedure Rules and section 3A of the Civil Procedure Act seeking orders; that this Court be pleased to order stay of execution of the decree pending hearing and determination of their appeal. They also filed a memorandum of appeal on 31<sup>st</sup> January 2017. The appeal is from the decision of the Chairman of the Business Premises Rent Tribunal reached on 9<sup>th</sup> December 2016.

2. The application is opposed but the Respondent's replying affidavit sworn on 3<sup>rd</sup> May 2017 and filed in Court on 4<sup>th</sup> May 2017. Some of the issues raised by this affidavit touches on the merits of the appeal. I have considered the pleadings wholesome together with the submissions filed.

3. The considerations for granting a temporary order of injunction is laid out under the provisions of order 42 rule 6 (2) to include:

**i). Substantial loss may result unless stay order is granted.**

**ii). Application for stay is made without unreasonable delay.**

**iii). The Court's discretion to make orders as the Court deems just.**

And in instances where the Court opts to grant the order of stay, it is given discretion under rule 6 (2) to make an order for security for the due performance of decree as may ultimately be binding on the applicant.

4. In this instance, there is an appeal filed challenging the order increasing rent for the suit premises. The issue in contention is a money decree (disputed rent). The Respondent has pleaded that the applicants were in rent arrears at the time of filing the application thus it is their argument this application is an abuse of the Court process.

5. In balancing the Applicants' right to appeal and not having the appeal rendered nugatory visa-vi the Respondent's right to enjoy the fruits of his judgement and so that either party is not inconvenienced (the

appellants with a huge debt to pay in the event the appeal fails and the respondents not being able to recover their money as no security is offered by any of the appellants), I hereby grant an order of stay of execution on condition that the appellants

**(a). Do not default in paying the previous rent due before the increment.**

**(b). The Appellants' advocates & the Respondent's advocates do open an escrow account within 14 days of this order where the difference in rent (amount contested) shall be deposited effective with the rents for January 2018 and the subsequent months until the appeal is heard and determined.**

**(c). In the event no account is opened within 14 days as stated above, the appellants to deposit the said sums in (b) above in Court.**

**(d). The disputed rent shall be deposited before the 10<sup>th</sup> of every month except for January amount which should be deposited by 10<sup>th</sup> February 2018.**

**(e). In default of paragraph (a) and (d) of this order, by any of the appellants, the stay order shall lapse in respect of the defaulting appellant and the Respondent will be at liberty to distress for the arrears without seeking leave of the Court.**

6. The costs of this application to abide the outcome of the appeal.

**Dated, signed & delivered at Mombasa on 23<sup>rd</sup> January 2018.**

**A. OMOLLO**

**JUDGE**