



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC APPEAL NO.11 OF 2018**

**LUCY NCEKEI.....APPLICANT**

**-VERSUS-**

**EZEKIEL MACHOGU & ANOTHER.....RESPONDENTS**

**RULING**

1. This is a Ruling in respect of two applications filed by the appellant/applicant. The first application is dated 7<sup>th</sup> March 2018 which seeks stay of execution of a ruling delivered by the Chairman of the Business Premises Rent Tribunal on 23<sup>rd</sup> February 2018. The second application is dated 11<sup>th</sup> April 2018 which seeks an order compelling the first respondent to re-open the business premises which was the subject of the Tribunal proceedings.

2. The applicant and one other person called Stephen Githinji had filed a reference at the Business Premises Rent Tribunal after the first respondent had closed the appellant's business premises which she operated at Jekima Plaza which is owned by the first respondent. The applicant filed an application before the Tribunal where she got ex-parte orders which compelled the respondents to re-open the business premises.

3. During the inter-partes hearing of the application before the Tribunal, the second applicant, Mr Stephen Githinji swore an affidavit in which he stated that he had not authorized the applicant herein to bring proceedings before the Tribunal. Mr Stephen Githinji was therefore removed from the proceedings. It turned out that the applicant had no tenancy relationship with the first respondent and that she had wrongly sued the second respondent who was a caretaker at Jekima Plaza. The Tribunal therefore ruled that both the reference by the applicant and the notice of Motion filed were incompetent and proceeded to strike out the reference and the notice of motion. The interim orders which had been granted were discharged.

4. The Tribunal condemned the applicant to pay the first respondent costs of Kshs.50,000/= within 30 days failing which execution was to issue. The OCS Jogoo Road Police Station was directed to enforce compliance and ensure that peace prevails. The first respondent was asked to pursue Stephen K N Munah for arrears of rent if he was still in occupation of the suit premises or pursue civil remedy if he had vacated the suit premises.

5. The applicant was removed from the suit premises and this is what prompted her to come to court. The respondents opposed the two applications based on grounds of opposition filed on 11<sup>th</sup> May 2018. The respondents contend that there is nothing to stay as the applicant has already been removed from the suit premises as she was a foreigner in the premises; that her removal was supervised by the OCS Jogoo Road Police Station as directed by the court. The respondents state that the applicant's goods were removed and placed outside the premises from where she picked them at 8.00 pm on the date of eviction.

6. The applicant states that the premises were locked with her goods inside the premises. The principles for grant of stay pending appeal are clear. First an applicant must bring the application without unreasonable delay. Second, there has to be demonstration of substantial loss. Third, there has to be security given for the due performance of the decree as may ultimately be binding upon the applicant.

7. In the instant case the Tribunal ruling was delivered on 23<sup>rd</sup> February 2018. This application was filed on 8<sup>th</sup> March 2018. I therefore find that there was no delay in bringing this application. On the issue as to whether there has been demonstration of substantial loss, this has to be considered from the circumstances of this case. The applicant contends that she was a tenant of the first respondent. The first respondent on the other hand contends that she was not a tenant. The applicant has not annexed anything to show that there was a tenancy relationship between her and the first respondent. The applicant seems to complain that there was an imposter who was brought on board to show that he had a tenancy relationship in respect of the suit premises other than her.

8. Nothing would have been easier than the applicant showing that she had a tenancy relationship with the first respondent. The circumstances under which the applicant brought in Stephen Githinji into the proceedings at the Tribunal are not clear. The said Githinji

removed himself from the proceedings. It is therefore difficult to see what substantial loss a person who has no tenancy relationship with the first respondent would suffer. Whereas an appellant has a right to exercise her undoubted right of appeal, such appeal has to be preferred when there are strong reasons for doing so. See court of Appeal decision in Carter & Sons Ltd and Deposit Protection Fund Board and 2 Others Civil Appeal No.291 of 1997 where the judges of Appeal had this to say;-

***“In our view, the mere fact that there are strong grounds of appeal would not in itself justify an order for stay. A party is expected to prefer an appeal only when there are strong reasons for doing so”.***

I will therefore decline to grant an order of stay of execution.

9. In respect of the second application, the applicant has already been removed from the business premises. Her goods were removed from the said premises. Even though the Tribunal ruling did not expressly use the word eviction, it is clear that having found that she was not a tenant, she could not be protected that is why the orders which had been given were discharged and the OCS Jogoo Road Police Station directed to maintain peace and ensure compliance. What had led the first respondent to lock the applicant out of the premises is that she was not a tenant. This is what made her to move to the Tribunal. After the Tribunal found that she was not a tenant, it discharged the interim orders which had been granted in her favour . The only logical conclusion is that the first respondent was at liberty to remove her. She has already been removed and to order her reinstatement in the face of the fact that she has not shown anything to show that she was a tenant would be stretching the law too far to protect persons who have not demonstrated that they deserve such protection. I will therefore proceed to dismiss the two applications with costs to the respondents.

It is so ordered

**Dated, Signed and delivered at Nairobi on this 24<sup>th</sup> day of May 2018.**

**E. O. OBAGA**

**JUDGE**

In the absence of:-

Applicant in person

Mr Buromote for respondents

Court Assistant: Kevin

**E.O.OBAGA**

**JUDGE**