



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC APPEAL NO.14 OF 2018

EAST AFRICAN SEED COMPANY LIMITED.....APPELLANT

=VERSUS=

KAUSHAK M SHAH & ANOTHER.....RESPONDENTS

(An appeal from the Judgement and Order of the Honourable Mr Mbichi Mboroki Chairperson, Business Premises Rent Tribunal Case No.344 of 2015, dated 23rd February 2018).

RULING

1. The appellant /applicant filed a notice of motion dated 20th March 2018 in which it sought orders of stay of execution pending appeal. The applicant contends that it has preferred an appeal against the decision of Honourable Mbichi Mboroki Chair-Person Business Premises Rent Tribunal in Tribunal case No.344 of 2015 delivered on 23rd February 2018. 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 Respondents have opposed the application based on a replying affidavit of the first respondent sworn on 10th April 2018. The respondents contend that the application herein is an abuse of the process of the court; that the application was filed after they had initiated the process of execution and that the applicant will not suffer any substantial loss. Even if the appeal succeeds, the applicants are in a position to refund what they would have been paid or can give rebates in rent.
3. I have considered the applicant's application as well as the opposition to the same by the respondents. 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.
4. In the instant case, the decree appealed against was passed on 23rd February 2018. This application was made on 20th March 2018. 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.100,000/= on top of what the appellant was paying monthly. There is no evidence that if the increased rent was paid and the appeal succeeded, the respondents will not be in a position to pay.
5. The applicant is a tenant of the respondents. If the appeal succeeds, the respondents can give rebates in rent or even refund. There is no suggestion that the respondents 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 respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 18th day of September 2018.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Motabori for Mr Mugalo for Respondent

Mr Ogutu for Mr Nduati for appellant

Court Assistant: Hilda

E.O.OBAGA

JUDGE