



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APP. NO. 287 OF 2016

JELIAH AYIENI.....TENANT/RESPONDENT

=VERSUS=

JULIUS MWANGI MWORIA T/A

COMPANION KENYA LIMITED.....LANDLORD/APPLICANT

RULING

1. This is the Notice of Motion dated 2nd November 2015. It is brought under Section 8(2) of the Rent Restriction Act, Order 10 Rule 11 and Order 22 Rule 22, Order 37 Rule 6 of the Civil Procedure Rules 2010. Section 27 and 28 of the Limitation of Actions Act Cap 22, Order 51 Rule 1 and 15 of the Civil Procedure Rules 2010, Sections 1A, IB, 3A 63(e) 79 G and 95 of the Civil Procedure Act Cap 21 Laws of Kenya and all enabling provisions of the law.
2. It seeks order: that:-
 - (1) *Spent*
 - (2) *Spent*
 - (3) *This honourable court be pleased to grant leave to the landlord/applicant to file appeal out of time.*
 - (4) *This honourable court be pleased to set aside, review, and or vary the ruling and all consequential orders issued in the Nairobi Rent Restriction Case No. 719 of 2015 therein on the 24th September, 2015.*
3. The grounds are on the face of the application and are listed as in paragraph a to i.
4. The application is supported by the affidavit of Julius Mwangi Mworio, the Landlord/Applicant herein sworn on the 2nd November 2015.
5. The application is opposed. There is a replying affidavit sworn by Jelliah Ayieni the Tenant/Respondent herein sworn on the 26th May 2016.
6. On the 8th September 2016, it was agreed that the application do proceed by way of written submissions.
7. It is the Landlord/Applicant's case that the tenant/respondent was his tenant from 12th January 2015 to 10th August 2015. She did not pay rent for 19 days she was in occupation of the premises in the month of January 2015. She vacated the premises without giving proper notice and without paying rent of Kshs 25,000 being rent for the month of August, 2015.
8. That the applicant should be given a chance to be heard as it is his right as stipulated and or enshrined under Article 50(1) of the Constitution of Kenya 2010 which provides that every person is entitled to a fair hearing. He prays that the application be allowed.
9. It is the Tenant/Respondent's case that this application is misplaced and the court cannot entertain the matter as the application was filed over six months after judgment was delivered. That Order 45 Rule 1 has not been invoked properly. That this application is an abuse of the court process. She prays that the application be dismissed with costs. She has relied on the case of **Edward Mwaniki Gaturu & Another vs Attorney General & 2 Others HCCC No 72 of 2013 and Mohan Meakin (K) Limited vs Mutunga Kiundi CA Civil Application No.**

10. I have considered the application, the supporting affidavit and the annexures. I have also considered the replying affidavit and the annexures. The issue for determination is whether this application is merited.

11. I have gone through the affidavit of Jelliah Ayieni, the respondent. In paragraph 19 she depones:-

“that the landlord was duly served with summons and acknowledged under protest by signing at the back of the summons but refused to file defence within the stipulated period, hence the matter was decided on 24th September and orders issued.”

12. The applicant has denied service. It was incumbent upon the respondent to annex a copy of the affidavit of service to the replying affidavit, so that this court could peruse the same. In the absence of such affidavit of service, I find that the applicant may not have been served at all.

13. Article 50(1) of the Constitution of Kenya, 2010 states:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

I am guided by the above provisions in finding that the applicant is entitled to a fair hearing. He should not be condemned unheard.

14. In the circumstances I find merit in this application and grant the orders sought namely:-

(a) That leave is hereby granted to the landlord/applicant to file appeal out of time.

(b) That there be stay of execution pending the filing of the appeal.

(c) The appeal be filed within (30) thirty days from the date hereof. In default this application shall stand dismissed.

(d) Each party to bear his/her own costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this...24TH.....day ofOCTOBER.....2018

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L. KOMINGOI

JUDGE