



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 6 OF 2016

KARSANDAS TULSHIDAS & SONSAPPELLANT

VERSUS

JOSEPHINE MUTUNGWA MUTUKURESPONDENT

RULING

1. In his Application dated 21st October, 2016, the Applicant is seeking for the following orders:

a) That there be a stay of execution of the award and/or Judgment delivered on 7th October, 2016, by the Business Premises Rent Tribunal Chairman and/or the Decree and/or the levying of distress together with all consequential orders pending the hearing and final determination of the appeal filed herein.

b) That the costs of this Application be provided for.

2. The Application is premised on the grounds that the Applicant is aggrieved by the award of the Business Premises Rent Tribunal; that the Applicant has filed an appeal challenging the said award and that if the order of stay of execution is not granted, the appeal will be rendered nugatory.

3. In response to the Application, the Respondent deponed that she is the registered proprietor of parcel of land known as Machakos Town Block II/86; that she sought to lawfully increase rent vide the statutory notice of 19th February, 2015 and that the Tribunal heard the dispute between her and the Applicant and increased the payable monthly rent.

4. It is the Respondent's cases that the Tribunal considered the Valuation reports of both parties and arrived at a just decision and that the Applicant should pay rent that was awarded by the Tribunal.

5. The Applicant's advocate submitted that the Application was filed without undue delay; that the Applicant will suffer substantial loss unless the orders are granted and that due to the back-dating of the increased rent, the Applicant was subjected to pay rent arrears of more than Kshs. 1,000,000.

6. On his part, the Respondent's advocate submitted that the amount payable to the Respondent is not a colossal sum; that the Respondent is in a position to refund the Appellant any amounts paid to her account if he succeeds in the Appeal and that the Applicant has not demonstrated the substantial loss that may be occasioned to him if the execution is not stayed.

7. The Respondent's counsel finally submitted that the Appellant has not provided any security.

8. The Applicant is seeking for a stay of execution of the Award of the Business Premises Rent Tribunal. The said award was delivered on 7th October, 2016.

9. In the Memorandum of Appeal, the Applicant has averred that the Honourable Chairman erred by increasing the payable monthly rent from Kshs. 130,000 to Kshs. 167,640; that the Honourable Chairman did not consider the valuation reports that were before him and that the Honourable Chairman erred by applying his Judgment retrospectively.

10. It is trite that under Order 42 Rule 6 of the Civil Procedure Rules, this court can stay execution of the Award of the Tribunal if it is shown that substantial loss may result to the Applicant unless the order is made and where an application has been made without unreasonable delay. The Applicant is also required to give security for the due performance of the decree.

11. The Respondent has not denied that indeed the award that was delivered by the Tribunal was to apply retrospectively, thus raising the rent arrears as at the time of the Judgment to more than Kshs. 1,000,000.

12. An award of more than Kshs. 1,000,000 being the rent arrears for the increased rent may cripple the Respondent's business, more so when the said arrears are to be paid immediately.

13. Considering that this court will have to determine the legality of the increase of rent from Kshs. 130,000 per month to Kshs. 167,640 and whether the increase of the rent is payable from the day when the Respondent issued the statutory notice or from the date of the Judgment, the order for stay of execution should issue.

14. In view of the fact that the Applicant has never defaulted in paying the agreed rent, the order for security for the due performance of the decree will not be necessary. The Applicant should continue paying the rent of Kshs. 130,000 per month pending the hearing and determination of the Appeal which should be prosecuted expeditiously.

15. For those reasons, I allow the Applicant's Application dated 21st October, 2016 in the following terms:

- a) There be a stay of execution of the award delivered on 7th October, 2016 by the Business Premises Rent Tribunal Chairman pending the hearing and determination of the pending appeal.***
- b) The pending appeal to be fixed for hearing within 120 days from the date of this Ruling.***
- c) The Applicant to continue paying the Respondent the monthly rent of Kshs. 130,000 pending the hearing and determination of the Appeal.***
- d) Each party to bear his/her own costs.***

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE