



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC MISC. APP. NO. 18 OF 2015

UMRA LIMITED T/A MALINDI SUPERMARKET.....APPLICANT

=VERSUS=

MOHAMED SWALEH HEMED.....RESPONDENT

R U L I N G

1. In his Application dated 22nd June, 2015, the Applicant is seeking for the following orders:-

(a) THAT a stay of any distress and or further proceedings do issue pending the hearing and determination of an intended appeal.

(b) THAT costs be in the cause.

2. The Applicant has deponed that on 12th May, 2015, the Respondent demanded a sum of Kshs.1,094,000 as rent arrears based on a disputed monthly rent of Kshs.109,400 up from Kshs.7,000; that on 14th May, 2015, it moved this court in HCCC No. 12 of 2014 and the court issued an injunction and that on 19th June, 2015, the Honourable Chairman dismissed the claim in the Tribunal.

3. The Applicant has deponed that having been aggrieved by the determination of the Tribunal, it intends to appeal and that unless the orders being sought herein are granted, the Respondent will levy distress.

4. In response, the Respondent deponed that the subject of the appeal herein is the Tribunal's Ruling in BPRT No. 94 of 2013 in regard to the complaint dated 7th August, 2013; that the orders being sought herein are contrary to the provisions of Section 15; that the High Court does not have jurisdiction to grant a stay order pending appeal which would stop a legal and valid distress based on a valid notice and that the Appellant herein is forum shopping for the court that will grant him the orders he is seeking.

5. The Respondent finally stated that it is his right as a landlord to levy distress on a notice that has taken effect and that the rent arrears now stand at Kshs.2,516,000.

6. The parties' advocates filed their respective submissions and authorities which I have considered.

7. The Applicant is seeking for a stay of distress pending the hearing and determination of an intended appeal.

8. The intended appeal is in respect of a decision of the Chairman in Tribunal Case No. 94 of 2013 – Mombasa. In that case, the Chairman dismissed the Applicant's reference dated 7th August, 2013 on 19th June, 2015.
9. The Applicant filed this claim on 23rd June, 2016 and annexed on its Application an unfiled and undated Memorandum of Appeal.
10. It is not clear to me if the Applicant eventually filed the Memorandum of Appeal within 30 days pursuant to the provisions of Section 15 (1) of the Landlord and Tenant (Shops, Hotels, Catering establishments) Act, Cap 301.
11. The Respondent has opposed the Application on the ground that the Applicant has filed numerous suits with the intention of defeating its efforts to distress for rent, to wit, CMCC NO. 49 of 2013, CMCCC no. 208 of 2013 and HCCC No. 12 of 2014.
12. Counsel has also submitted that the current Application is contrary to the provisions of Section 15(1) of the Act because appeals on to this court must arise from a reference; that there was no reference that was filed by the Applicant and that the Applicant only filed a complaint and therefore does not have a right of appeal.
13. It is trite law that this court can grant to the Applicant a stay of execution pending appeal so as not to render the intended appeal nugatory.
14. Considering that the Respondent has raised the issue of numerous suits that have been filed by the Applicant, and in view of the unfettered discretion of the court to grant or refuse to grant the orders being sought, I shall allow the Applicant's Application on the following conditions:-

(a) The Applicant to deposit in this court Kshs.1,000,000 being security for any rent arrears that may be found due and owing within 30 days pending the hearing and determination of the appeal.

(b) The Applicant to prosecute his appeal within 120 days from the date of this Ruling.

(c) Each party to bear his/its own costs.

Dated, signed and delivered in Malindi this 14th day of July, 2016.

O. A. Angote

Judge