



IN THE COURT OF APPEAL

AT NYERI

[CORAM: KANTAL, J.A) IN CHAMBERS

CIVIL APPLICATION NO. 156 OF 2018 UR NO. 103 OF 2018

BETWEEN

ALEX MURIITHI NJIRU1ST APPLICANT

JOE H. KARANJA.....2ND APPLICANT

AND

PRISCA NJUURA JOHN.....RESPONDENT

(An application for stay of execution pending hearing and determination of the intended appeal from the Judgment/Ruling of the High Court of Kenya at Embu, (Y.M. Angima, J) dated 20th December, 2018.

RULING

The motion dated 26th December, 2018 came before me on 21st January, 2019 on certification for urgency. I perused the motion, the affidavits and other documents on record and being dissatisfied on the issue of urgency, I declined to certify the motion as urgent. The 2nd applicant **Mr. Joe H. Karanja** by letter dated 11th February, 2019 addressed to this Court requested for a hearing on the question of urgency stating *inter alia* that in the application, he had sought a stay of execution; that on 21st January, 2019, the respondent had moved a court (probably the High Court) asking that a Judgment be adopted as a Judgment of the court and that a record of appeal had been filed. Upon perusal of that letter, I directed that the parties be served for hearing today.

When the application came up for hearing before me on the issue of urgency, **M/s Warutere and Associate Advocates** had filed a Notice of Appointment of Advocates and **Mr Davidson Warutere**, learned counsel, appeared for the applicants while **Mr. Mugambi Njeru**, learned counsel, appeared for the respondent. In submissions before me **Mr. Warutere** informed me that the application for stay was pending in this Court but that on 21st January, 2019 the respondent had filed an application under certificate of urgency asking for a ruling of the Tribunal established under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (the Shops Act) to be adopted as a Judgment of the High Court and that the applicants should be evicted. According to him, if the applicants were evicted they would lose goodwill for business premises they are occupying.

Mr. Mugambi Njeru in opposing the application on the question of urgency drew my attention to Section 15 of the Shops Act where decisions of that Tribunal are available to the High Court but that there is no appeal to this Court. In further submissions, it was **Mr. Njeru's** case that there was no urgency as the applicants had been granted stay in June, 2018 and should have relocated to other premises. He further informed me that the applicants have already vacated the premises.

In a brief reply, **Mr. Warutere** replied that the Shops Act could not be read in isolation but should be read within the Constitution of Kenya 2010 and other laws.

It has been stated before by this Court that an applicant who applies to be heard under certificate of urgency must satisfy certain requirements on why he should be heard urgently. It is the policy of the court that parties be treated equally and be accorded the same facilities when they come to court. It is good public policy that parties should be served on a first come first out basis. As stated in the ruling I delivered on 19th May, 2016 in the case of **Heritage Insurance Company Limited vs. Christopher Onyango, Civil Application No. NAI 110 of 2016:**

“The practice of this Court is to hear such motions on a “first-come-first heard” basis, the rationale being obviously to treat parties who come to this Court with a measure of equality. Rule 47 comes in to assist those who are able to demonstrate that there is imminent danger of execution and a delay cannot be allowed at all. It is a safety valve, designed in the nature of a fast lane of traffic in congested city which lane is reserved for ambulances, fire engines and such. So a party who succeeds in

showing imminent danger of execution is permitted by Rule 47 to use that lane to jump the queue and be ahead of lined-up traffic”.

I am still of the same persuasion.

When I looked at the application here, I was not satisfied that there was any justification for the application to be certified urgent under Rule 47. I noted that the applicant had filed proceedings at the Business Premises Rent Tribunal in respect of premises where he was a tenant. That Tribunal ruled against the applicant but gave him six months to vacate premises by 31st December, 2018. The applicant then filed proceedings in the Environment and Land Court of Kenya at Embu being ELCA NO 32 of 2018 asking for stay. **Angima, J** in a ruling delivered on 20th December, 2018 found that the Tribunal had found that the respondent was entitled as a landlord to the premises to run her own business. The application was dismissed.

With that history in mind, I was not satisfied that the application filed here is urgent. I may say without ruling that I entertain a doubt whether orders arising from that Tribunal can be appealed to this Court. I still hold the view that I held before that the application is not urgent and the same would be listed for hearing in the usual way.

The applicants of course have the rights reserved by Rule 55 of the rules of the court.

Dated and delivered at Nyeri this 18th Day of February, 2019.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR