

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI

(CORAM: BOSIRE, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAL31 OF 2000 (17/2000 UR)

BETWEEN

HANNAH WANJIKU T/A

GUTHERA PROVISION STORES APPLICANT

**(An application for stay of execution of the judgment
pending the lodging and hearing of an intended
appeal from the ruling and decree of the High Court
of Kenya at Nairobi (Justice O'Kubasu) dated 4th
February 2000
in**

H.C.C.C. No.1316 of 1998)

AND

TIMOTHY JOWELL KAMANO RESPONDENT

R U L I N G

I heard counsel for both parties herein on the question of urgency. The jurisdiction of the court on the matter is donated by rule 47 of the Court of Appeal Rules, which, in pertinent part, provides that: "

47(1) Any application which the applicant desires to set down for hearing as a matter of urgency shall be ... supported by an affidavit setting forth the matters upon which the applicant relies as showing that his application should be heard without delay."

The applicant swore such affidavit and states in it that she fears being evicted from business premises which she has occupied for over 50 years as a tenant and that she will suffer undue hardship and loss if she is evicted. She therefore urges that her application be heard as a matter of urgency. She deposes that she has a strong case on the merits of her application.

The premises in question are subject to the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 Laws of Kenya. The applicant whose tenancy was protected by the provisions of the Act, was allegedly served with a termination notice pursuant to the provisions of section 4 thereof. She did not challenge the notice within the time allowed, but nonetheless filed a late reference of the notice to the relevant tribunal. She did not pursue the reference and instead she applied for its withdrawal. She took no further action on the matter. After some time, the respondent who was her landlord filed a suit in the superior court seeking possession of the suit premises on the ground that the tenancy notice took effect after its expiry. The applicant in her defence denied she was served with the notice but the superior court ruled otherwise, in an application by the Landlord for summary judgment pursuant to the provisions of O.XXXV rules 1 and 2 of the Civil Procedure Rules. The applicant was aggrieved and after promptly filing a notice of appeal, brought this application.

There is no dispute that the applicant has been a tenant in the suit premises for many years and her eviction is likely to cause great hardships to her. It may be true, as Mr Machira for the respondent argued, that the applicant exaggerated the value of her business to influence this court to view her circumstances as desperate. However, that will be a matter for comment by the full court when it will consider the merits of her application. Her long tenancy in the suit premises per se, is in my view a good enough and sufficient reason for treating this application for stay of execution as urgent. I accordingly certify it as such. The costs of the inter partes hearing on urgency to abide the outcome of the application.

Dated and delivered at Nairobi this 24th day of February, 2000.

S.E.O. BOSIRE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR