



Saad v Ahmed & another; Juma & 6 others (Tenant) (Environment and Land Appeal E028 of 2023) [2025] KEELC 2874 (KLR) (26 March 2025) (Judgment)

Neutral citation: [2025] KEELC 2874 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL E028 OF 2023**

**SM KIBUNJA, J
MARCH 26, 2025**

BETWEEN

SALIM FADHILI SAAD APPELLANT

AND

AHMED JAFFER AHMED 1ST RESPONDENT

ALI JAFFER AHMED 2ND RESPONDENT

AND

AHMED JUMA TENANT

SAID BAWAZIR TENANT

AHMED HISHAM TENANT

FATMA S. FATHIL TENANT

ABDULKADIR BAGOTH TENANT

K. VRAATHOO TENANT

SHARIFF ALWI TENANT

(Appeal from the ruling and order of Deputy Chairperson of the Rent Restriction Tribunal, Hon Janice K. Ikingi, delivered on the 26th day of September 2023, in Mombasa RRT case No. 25 of 2019- Ahmed Jaffer Ahmed and Ali Jaffer Ahmed versus Ahmed Juma, Said Bawazir, Ahmed Hisham, Fatma S. Fathil, Abdulkadir Bagoth, K.V. Raathoo, Shariff Alwi and Salim Fadhil Saad.)



JUDGMENT

1. The appellant being aggrieved by the entire ruling of the Deputy Chairperson of the Rent Restriction Tribunal, Hon Janice K. Ikingi, delivered on the 26th Day of September 2023 in Mombasa RRT Case No. 25 of 2019, Ahmed Jafeer Ahmed and Ali Jaafer Ahmed versus Ahmed Juma, Said Bawazir, Ahmed Hisham, Fatma S. Fathii, Abdulkadir Bagoth K. V. Raathoo, Shariff Alwi and Salim Fadhil Saad, filed this appeal and sought for the following orders:

- i. “This appeal be allowed,
- ii. Set aside the said ruling and all other consequential orders,
- iii. Award the Appellant the costs of this Appeal.”

The memorandum of appeal dated 3rd October 2023, raised two grounds, that the learned Deputy Chairlady erred in law and fact in holding that after assessing and fixing standard rent in excess of the statutory ceiling, the Rent Tribunal ceased to have jurisdiction even over applications brought under section 5 (1) (m) & (n) of the *Rent Restriction Act* Chapter 296 of Laws of Kenya; and that the learned Deputy Chairlady erred in law and fact by declining to hear the appellant’s advocates before making the ruling appealed against.

2. Ahmed Jaffer Ahmed, the 1st respondent, opposed the appeal through the replying affidavit sworn on 19th June 2023, inter alia deposing that the appellant has no locus standi to file this appeal, as he was not a party in Mombasa RRA No. 25 of 2019; that his Notice of Motion for joinder dated 25th September 2023, was dismissed after the tribunal held it no longer had jurisdiction; that the appellant had claimed to act for his deceased wife in the said application, but without obtaining grant of letters of administration or apply for substitution; that the other tenants are not appellants and Ahmed Juma had agreed to rent assessment, Fatma S. Fadhil is deceased, and Abdulkadir Bogoth had vacated the premises. That the rest of the tenants have filed Mombasa CMCC NO. E1427 OF 2023 - K.V. Rathod & Others versus Ahmed Jaffer & Others, and cannot purport to pursue parallel litigation through this appeal. that after the ruling of the tribunal that it had no jurisdiction over the rent issue, it could not be faulted for failing to hear the appellant’s advocates as it had downed its tools. He stated that he is getting distressed as the appellant has verbally vowed to frustrate him and has refused to pay rent directly to him, and instead deposited in the tribunal thereby making him suffer as it is his only source of income.
3. The learned counsel for the appellant and respondents/landlord filed their submissions dated the 4th November 2024 and 16th October 2024, respectively, which the court has considered.
4. The issues for determination by the court are as follows:
 - a. Whether the tribunal erred in law and fact in finding that it had no jurisdiction after assessing and fixing the standard rent beyond the statutory ceiling.
 - b. Whether the tribunal had jurisdiction to hear the appellant’s advocates in his application after ruling it had no further jurisdiction in the matter.
 - c. Who bears the costs?
5. The court has carefully considered the grounds on the memorandum of appeal, record of appeal, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon and come to the following determinations:



- a. This being a first appeal, the court has to consider the evidence presented before the tribunal which was the trial court afresh, do its own analysis and come up with its own conclusions, while being aware it did not see or hear the witnesses testify, in line with the decision in the case of Paramount Bank Limited versus First National Bank Limited & 2 Others [2023] KECA 1424 (KLR) where the Court of Appeal discussed a first appeal and held that:

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the *Civil Procedure Act*, a first Appellate Court can appreciate the entire evidence and come to a different conclusion.”

And in the case of *Selle versus Associated Motor Boat Company Limited*. [1968] EA 123, the Court of Appeal held thus:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hameed Saif vs. Ali Mohamed Sholan*(1955), 22 E. A. C. A. 270).”

The appellant filed this appeal through memorandum of appeal dated 3rd October 2023, after being dissatisfied with the ruling dated 26th September 2019 in RRA No. 25 OF 2019. The appellant’s application had sought for inter alia orders to join the rent assessment case as a tenant, and the certificate of rent dated 8th September 2022 to be set aside ex debito justitiae. His main reason being that he was never served with pleadings and that, he operates a business on the suit property and hence the dispute was subject to the business premises rent tribunal. From the factual materials presented before the tribunal, the appellant was not actually the tenant in the suit premises belonging to the respondents. He was indeed, a spouse of Fatma S. Fadhil, who was the 4th tenant in the tribunal proceedings in Mombasa RRA No. 25 of 2019.

- b. There is no dispute that the Tribunal adopted the rent valuation report of 27th May 2022 in its proceedings of 7th December 2022, giving the effective date as 1st January 2023. The proceedings also show that an order to serve all the tenants was issued, and during the subsequent proceedings of 8th December 2022, the court made a note/order that “There is evidence that proper service was effected by virtue of affidavit of service dated 8th December 2022.” The court takes judicial notice of the fact that the appellant herein, was not one of the tenants or parties in the suit and was therefore, not one of the parties’ to be served. It is also not disputed that the Tribunal proceeded to make the decision on the 26th September 2023, that it was without the pecuniary jurisdiction to deal with the dispute before it and directed the parties to seek recourse or appeal before the civil court.



- c. The pecuniary jurisdiction of the tribunal is Kshs. 2,500 as per the *Rent Restriction Act* Chapter 296 of Laws of Kenya. The two respondents/landlords, had made an application for rent assessment filed on 21st November 2019 and a valuation was conducted on 27th May 2022 estimating the rent for each unit at over Kshs. 20,000. The provisions of Section 2 (1) (c) of the *Rent Restriction Act* is quite clearer and the tribunal having found the rent ceiling valuation was above its statutory ceiling, had to down its tools in the matter. It could not even entertain the appellant’s applications under section 5(1) (m) and (n) of the Act, as it has been held ad nauseum that without jurisdiction a court has to down its tools. In the celebrated case of Owners of Motor Vessel ‘Lilian S’ vs. Caltex Oil Kenya Limited [1989] eKLR, the court held that:

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the Statute Charter or Commission under which the Court is Constituted, and may be extended or restricted by like means”.

The Court went further to state that,

“..where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”.

Similarly, the Supreme Court of Kenya upheld the above position in the case of Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 others [2012] eKLR where it held that:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of Law can only exercise jurisdiction as conferred by *the Constitution* or other written Law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by Law.”

I see no fault in the Tribunal’s decision of 26th September 2023, to the effect that it was without jurisdiction in view of the rent ceiling valuation of 27th May 2022, adopted on 7th December 2022. The Tribunal down its tools, and ground (1) on the memorandum of appeal dated 3rd October 2023, is therefore without merit and is for rejected.

- d. The tribunal proceedings of 26th September 2023, that is at pages 33 and 34 and the order issued on 27th September 2023 at page 35 of the record of appeal, confirms the tribunal made the decision subject matter of this appeal. The Tribunal proceedings of 26th September are reproduced here below verbatim as follows:

“26/09/2023

CORUM: Janice K. Ikingi Deputy Chairman

Court assistant Barasa and Elizabeth

Applicants/landlords-

1st Respondent/tenant-



2nd “ “

3rd “ “

4th “ “ Absent

5th “ “

6th “ “

7th “ “

8th “ “

Order

With the standard rent having been assessed and fixed in excess of the statutory ceiling, the Tribunal ceased to have jurisdiction and therefor the Applicant/tenant is at liberty to pursue and appeal the matter at the civil court.”

The notice of motion under certificate of urgency dated 25th September 2023, at pages 14 to 31 of the record of appeal has a date stamp of 26th September 2023, that I take to be the date it was filed. The application is brought pursuant to sections 5(1)(m) 7 (n) of the [Rent Restriction Act](#) chapter 296 of Laws of Kenya, Order 1 Rule 10 of the Civil Procedure Rules, and sought for prayers inter alia that the appellant, who was then the applicant, to be joined in the case as a tenant, and the court to reopen the proceedings, and set aside ex debito justitiae the rent assessment made vide certificate of rent dated 8th December 2022. I have perused the Tribunal proceedings of 26th September 2023, and there is no mention about this application.

- e. The learned counsel for the appellant has however attempted to shed some light on what happened after the application was filed, when he submitted that:

“When this application was placed before the Deputy Chairperson during that session, she declined to deal with same on the ground that the Tribunal was not having jurisdiction over the matter since it has assessed the standard rent in excess of its statutory ceiling. See her orders at page 35 of the record.

Your lordship will note from the proceedings of 26th September 2023 that this application was placed before the said judicial officer on that day, and even though, as the counsel for the applicant, now appellant, I was there, the Tribunal not only declined to hear me, but even declined to place me on the corum. See page 34, second last paragraph.”

As stated above, I have keenly perused the proceedings on 26th September 2023, and have not seen any mention of the application appellant’s application dated 25th September 2023 and filed on 26th September 2023. I have also not seen any indication that the applicant, who is the appellant herein and or his counsel were present before the Tribunal on that date. The court is left wondering whether the application was filed before or after the order that the Tribunal was without jurisdiction was made. If indeed we go by what counsel for the appellant submitted that the Tribunal declined to place him on the corum, or to hear his client’s application, then it is highly likely or probable that the application was filed after the Tribunal had made the order to down its tools. In that case, as the application did not contain a prayer for review or setting aside the order on jurisdiction of 26th September 2023, then the court finds no basis to fault the reported decision of the Deputy Chairperson of the Tribunal not to hear the said application.



I say reported decision because there is no such decision on the Tribunal proceeding or no such extracted order is attached to the record of appeal. Ground (2) on the memorandum of appeal dated 3rd October 2023, being clearly based on some reported oral decision or order by the Deputy Chairperson of the Tribunal not to hear the appellant's application dated 25th September 2023, cannot amount to a valid ground of appeal to be determined by this court, and is rejected.

- f. I would however hasten to add that it is in order for a court that has ruled or determined that it is without jurisdiction in a matter, to record in the coram any party(ies) and or counsel who may subsequently appear before it for any court process for record purposes and to remind the party(ies) and or counsel of its earlier order/decision to the effect that it had downed its tools, for record and posterity's sake.
 - g. It is not disputed that the appellant's wife had another pending litigation being RRT No. 180 of 2018 before the Rent Restriction Tribunal over the same subject matter of rent increment, and the appellant has reportedly been substituted in place of his deceased's spouse who was the tenant. It is not clear from the facts presented before this court why the appellant want the same issue to be litigated concurrently through different suits pending before different courts, with the attendant risks of conflicting decisions that is likely to put the courts at disrepute.
 - h. The superior courts decisions cited by counsel for the appellant in their submissions do not therefore apply in this matter, as for reasons inter alia that the appellant was not a party in the matter in which the Tribunal had made an order of lack of jurisdiction; that the appellant had not obtained grant to get clothed with the legal basis of representing Fatma S. Fathil, his deceased wife who was a tenant and party in the proceeding; the Tribunal decision downing its tools had not been successfully reviewed, set aside or appealed against, and the application had no prayer of reviewing and or setting aside the order of 26th September 2023. For the reasons set out above this appeal is without merit and is for dismissal.
 - i. Costs follow the event under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, unless when otherwise ordered by the court for good cause. I find no good cause to deviate from that general edict in this appeal, and the appellant will pay the respondents costs. it is only just that the appellant bears the costs.
6. From the foregoing, the court finds and orders as follows:
- a. The appeal herein is without merit and is dismissed in its entirety.
 - b. Costs to be borne by the appellant.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 26TH DAY OF MARCH 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Appellant : Mr. Odongo

Respondents : No Appearance

Shitemi – Court Assistant.

S. M. KIBUNJA, J.



ELC MOMBASA.

