



**Yano v Sagini (Civil Appeal E754 of 2022)
[2024] KEHC 16785 (KLR) (Civ) (12 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 16785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E754 OF 2022

NIO ADAGI, J

AUGUST 12, 2024

BETWEEN

ALICE JEPKOECH YANO APPELLANT

AND

CHRISTINE MABERA SAGINI RESPONDENT

*(Being an Appeal from the Judgment of Hon. V. M. Mochache
(RM) in Milimani Small Claims Court in SCC Mo. 4092 of 2022)*

JUDGMENT

1. The Respondent filed a Statement of Claim dated 5th June 2022 before the Milimani Small Claim's Court. It was her case that on 8th November 2021, she signed a pre-tenancy application form prepared by Excella Realty on behalf of the Appellant whereby she applied to occupy Flat number 16 in Aydee Court Apartment in Kilimani owned by the Appellant. The Flat is stated to have been in disrepair and lacked basic utilities including water and electricity.
2. The Respondent averred that she agreed to enter into a tenancy agreement subject to the Appellant repairing the house and restoring utilities before 1/1/22 when she was to move in after giving notice to her previous land lady.
3. On her part, the Appellant required a sum of Kshs. 220,000.00 made up of rent and deposit, which was to be used to repair the premises. The amount was duly paid to the Appellant. On her part, she executed a tenancy agreement for the Respondent to sign. However, the Respondent failed to repair the house. As at 3.01 2022, no repairs had been done. The Respondent was forced to seek alternative accommodation and demand for refund of Kshs.220,000.00.



4. The Appellant filed a response dated 18.7.2022. It was her case that she entered into a tenancy agreement dated 01.12 2021 with the Respondent in respect of property known as Flat number 16 Aydee Court Apartments erected on LR No 209/354/18. She avers that she carried out several repairs and renovations upon receipt of the Kshs. 220,000.00. Instead of occupying the premises, the Respondent is stated to have made unreasonable demands for further repairs and renovations.
5. The Respondent is then stated to have terminated the agreement in breach of Clause 5(v) of the agreement. The Appellant therefore averred that she was entitled to rent for the month of January 2021 being the sum of Kshs. 70,000.00- and one-month's rent in lieu of notice in the sum of Kshs. 70,000.00. In addition, the Appellant averred that she paid the agent, a sum of Kshs. 35,000.00 being commission and a sum of Kshs. 2,500.00 being fees for tenancy agreement. Hence, she claimed a sum of Kshs. 177,500.00 from the sum of Kshs. 220,000.00 paid thereby admitting a sum of Kshs. 42,500.00.
6. The matter proceeded for hearing. The Respondent testified and called a witness. The Appellant also testified. Both parties reiterated the contents of their pleadings as summarized above.
7. The trial court then framed three issues for determination as follows:
 - a. Whether there was a tenancy agreement between the parties?
 - b. Whether the Claimant was required to pay rent for the month of January 2022 and one month's rent in lieu of notice?
 - c. What orders the court should grant.
8. Upon considering each of the issues above, the trial court found that the Respondent had proved her case on a balance of probabilities and entered judgment for the Respondent in the sum of Ksh.220,000/- sought in the Claim plus costs and interest.
9. The judgment is silent on the outcome of the Appellant's counter claim.
10. Aggrieved by the said judgment, the Appellant lodged this appeal raising 6 grounds of appeal.
11. I have perused the Record of Appeal, considered and weighed the rival submissions on the appeal and also taken into consideration the judicial decisions cited.
12. I have also perused through the grounds of appeal and to me the Appellant seems to be challenging the contract or rather the purported tenancy agreement particularly the legal principles that govern formation of contracts.
13. In addition, the Appellant has in her submissions raised an issue on the jurisdiction of the trial court in hearing and determining the claim.
14. First, I deem it necessary to examine the issue of jurisdiction. I find that the issue for determination is whether the court had jurisdiction to entertain the claim
Halsbury's Laws of England 4th Edition, Vol. 10, paragraph 314, defines jurisdiction as:-
'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.'
15. There have been considerable developments with regard to the law on jurisdiction that governs such disputes that shall guide me on this issue.



16. The guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine the suit, then the suit would be deemed a nullity as per the decision of Nyarangi J A in the case of Owners Of Motor Vessel "Lilian S" V Caltex Oil (K) Ltd [1989] KLR 1 that:-

“Jurisdiction is everything without which a court of law has no power to make one more step where a court of law has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction.”

17. According to the Record of Appeal, and the pleadings before the trial court that are on the record of appeal, it is not contested that the dispute relates to amount of money that was paid by the Respondent to the Appellant on an anticipated tenancy relationship. The Respondent did not execute the Tenancy Agreement for Almond Court and therefore the tenancy relation between the Appellant and the Respondent did not materialize. The dispute cannot therefore be said to be founded on any tenancy as none was entered into by the Parties.

18. I also notice that the Appellant never raised the issue of jurisdiction whether as a point of law, objection or otherwise in the Response to the Statement of Claim, during trial, in her submissions before the trial court or in the grounds of appeal.

19. She in fact responded to the Claim and at the same time counter claimed. To me the Appellant submitted to the jurisdiction of the court and is estopped from now turning around through the submission to this appeal to challenge the jurisdiction.

20. It is my finding that the trial court had jurisdiction to entertain the claim.

21. Secondly, I will consider the appeal in terms of the contract or rather the purported tenancy agreement particularly the legal principles that govern formation of contracts.

22. The court of Appeal in William Muthée Muthami versus Bank of Baroda (2014) eKLR, stated that for a contract to be valid under the law of contract, it must be proved that there was offer, acceptance and consideration.

“In the law of contract, the aggrieved party to an agreement must, in addition, prove that there was offer, acceptance and consideration. It is only when those three elements are available that an innocent party can bring a claim against the party in breach.”

23. Further, in Charles Muirigi Miriti versus Thananga Tea Growers Sacco Limited and Another (2014) eKLR the court of appeal stated that it is trite that there are three essential elements for a valid contract. That is an offer, acceptance and consideration.

24. It is apparent on record that the Respondent did offer to rent the premises vide the Pre-Tenancy Application form filed in court. According to the Respondent, it would appear that the offer was made conditionally, that the Appellant would put the house in a tenantable condition by carrying out the repairs and renovations. The offer seemed to have been accepted. Although there is no written acceptance, the subsequent conduct of the parties would seem to suggest that the offer was accepted noting that the Claimant paid a sum of Kshs. 220,000.00 to facilitate the repairs and the subsequent preparation of the draft tenancy agreement.

25. A contract is supposed to be executed by both parties to a contract. From the evidence on record, the draft tenancy agreement was not executed by the Respondent. The document before the court is only executed by the Appellant.



26. Accordingly, I do agree with the finding of the trial court that the Parties did not enter into a valid written tenancy agreement and none existed by the time the claim was instituted in court. The Respondent's claim being a special damage claim, was specifically pleaded and strictly proved.
27. Now turning to the Appellant's counter claim for Ksh.177,500/-, I have confirmed from the record that the Appellant though he pleaded the counter claimed amount, he did not provide any evidence in support of the same and it is my finding that she was not entitled to the said amount.
28. In the result it is my finding that the appeal lacks merit. The same is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY at MACHAKOS ON 12TH AUGUST 2024

NOEL I. ADAGI

JUDGE

