



Mutua v Akinyi (Civil Appeal E140 of 2021) [2022] KEHC 12224 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E140 OF 2021**

JN KAMAU, J

JULY 28, 2022

BETWEEN

LILIAN NGUMA MUTUA APPELLANT

AND

BEATRICE AKINYI RESPONDENT

(Being an Appeal arising from the Judgment of Hon H. Korir, Chairman Rent Restriction Tribunal in case No 55 of 2020 delivered on 29th November 2021)

RULING

Introduction

1. In her Notice of Motion dated and filed on 3rd December 2021, the Appellant herein sought for orders that the order made on 29th November 2021 compelling her to pay rental arrears amounting to a tune of Kshs 82,250/= to the Respondent together with all consequential orders therefrom be set aside.
2. In her Notice of Preliminary Objection dated 9th December 2021 and filed on 10th December 2021, the Respondent raised an objection to both the Appellant's application and the appeal herein on the grounds that this court lacked the requisite jurisdiction to hear and determine the said application and appeal by virtue of the provisions of Section 8 of the *Rent Restriction Act* Cap 296 (Laws of Kenya) which provides that all appeals from the Rent Restriction Tribunal fall within the jurisdiction of the Environment and Land Court and not the High Court.
3. When this matter came up in court on 9th December 2021, it was directed that they first proceed with the Preliminary Objection.
4. The Appellant's Written Submissions were dated 28th February 2022 and filed on 1st March 2022 while those of the Respondent were dated 24th January 2022 and filed on 9th February 2022.
5. This Ruling is based on the said Written Submissions which both parties relied upon in the entirety.



Legal Analysis

6. The Respondent submitted that the High Court did not have jurisdiction over matters under the *Rent Restriction Act* and that any endeavor to impose the same would amount to conferring it jurisdiction. In this regard, she placed reliance on the case of *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* [1989] eKLR where the court held that jurisdiction was everything and that without it, a court had no power to make one more step.
7. She was emphatic that jurisdiction emanated expressly from the law, *the Constitution* and the Statute and that where it was expressed in black ink and on a white paper, all custodians of the law should be guided by that express guiding light.
8. She invoked Section 8 of the *Rent Restriction Act* and argued that the said provision was couched in mandatory terms that the court which had jurisdiction over matters arising from the Rent Restriction Tribunal was the Environment and Land Court (ELC).
9. She contended that the application and the appeal were a misconception of the law and void ab initio having been brought before a court that lacked the necessary jurisdiction and thus urged this court to strike them out with costs.
10. On her part, the Appellant placed reliance on Article 165 (3) (a) and (b), (6) and (7) of *the Constitution* of Kenya which she argued was clear on the jurisdiction of the High Court. She submitted that the Rent Restriction Tribunal was not an exception to the above provisions and consequently, her appeal and application were properly filed in this court had jurisdiction to hear and determine the same. She thus urged the court to dismiss the Respondent's Preliminary Objection with costs.
11. Section of 8 (2) of the *Rent Restriction Act* provides as hereunder: -
 1. Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.
 2. An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases—
 - a. in the case of an order under subsection (5) of section 6;
 - b. or on any point of law; or
 - c. in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law"
12. From the above provisions it was evident that an appeal against a ruling, order and/or decision of the Rent Tribunal was to be heard and determined by the ELC. This court therefore found that it did not have jurisdiction to hear and determine the Appeal herein. A court with no jurisdiction was therefore required to down its tools as was held in the case of Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd 1989 KLR 1
13. Having found it had no jurisdiction herein, this court would have struck out the Appeal and the application herein as prayed by the Respondent. However, striking out pleadings is a draconian act which should only be resorted to in plain cases and as a last resort as was held in the case of *GBM Kariuki vs. Nation Media Group Limited and 3 Others* [2012] e KLR. This court found it prudent instead to transfer this matter to the appropriate court for hearing and determination of the same as it was in the interests of justice to do so.



Disposition

14. For the foregoing reasons, the upshot of this court's decision was that the Respondent's Notice of Preliminary Objection dated 9th December 2021 and filed on 10th December 2021 was merited and the same be and is hereby upheld.
15. It is hereby directed that this file be and is hereby transferred to ELC Kisumu and that the matter be mentioned before the Judge of that court on 19th September 2022 for further directions and orders.
16. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF JULY 2022

J. KAMAU

JUDGE

