



Hassan v Sagal Investments Limited & another (Environment and Land Appeal E015 of 2023) [2023] KEELC 18278 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18278 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E015 OF 2023
MD MWANGI, J
JUNE 16, 2023**

BETWEEN

AHMED ALI HASSAN APPELLANT

AND

SAGAL INVESTMENTS LIMITED 1ST RESPONDENT

ABDI HASSAN ABDIB 2ND RESPONDENT

RULING

(In respect of the Appellant’s Notice of Motion application dated February 16, 2023 seeking an order of temporary injunction against the Respondents pending hearing and determination of the appeal and the Respondents’ Notice of Motion application dated February 22, 2023 seeking an order of temporary injunction against the Appellant pending hearing and determination of the appeal.)

Background

1. The Appellant herein approached the Rent Restriction Tribunal describing himself as a Plaintiff/Landlord vide Rent Restriction Case No E1125 of 2022 sometimes in the month of October 2022. He obtained ex parte orders from the Tribunal on the October 19, 2022 on the basis of his application filed under certificate of urgency. The said orders were: -
 - a. That the application is hereby certified as urgent and heard ex-parte in the first instance.
 - b. That the Defendant/Tenant is hereby ordered to pay the outstanding rent arrears within 30 days.



- c. That in default the Plaintiff/Landlord is to levy distress to recover the rent arrears via an auctioneer.
 - d. That the Plaintiff/Landlord is to take a date for inter parties hearing on the issue of vacant possession and serve within 14 days failing which these orders shall stand discharged.
2. On February 7, 2023, the Appellant obtained further ex parte orders from the Rent Restriction Tribunal after consideration of his 2nd application yet again under certificate of urgency. The orders were as follows:
 - a. That the application is hereby certified as urgent and heard exparte in the first instance.
 - b. That Abdi Hassan Abdi is hereby enjoined in the matter as 2nd Defendant/ Respondent.
 - c. That the Plaintiff/Landlord is hereby granted leave to levy distress against the 2nd Defendant/Respondent's goods in order to recover the outstanding arrears.
 - d. That the OCS Industrial Area Police Station do provide assistance/security during the levying of distress.
 - e. That the Plaintiff/Landlord are to take a date for inter partes hearing on the issue of vacant possession and serve within 14 days, failing which these orders shall stand discharged.
3. On February 14, 2023, the Rent Restriction Tribunal upon considering an application by the Respondents herein under certificate of urgency, set aside its earlier orders made in favour of the Appellant. The order of the Tribunal was to the effect that 'the Tribunal orders of October 17, 2022 and February 6, 2023 are hereby reviewed and set aside pending the hearing of the application inter partes.'
4. The Tribunal further made an order restraining the Plaintiff/Landlord, his servants, employees and or agents from levying distress, evicting, harassing the Defendant/Tenant and or in any manner interfering with his tenancy pending the hearing of the application. The Plaintiff/Landlord was also ordered to return all the Defendants/Tenant's goods that were confiscated forthwith. The OCS Industrial Area Police was directed to ensure compliance with the orders issued.
5. The Appellant herein dissatisfied with the orders of the Tribunal of February 14, 2023 filed this appeal by way of the Memorandum of Appeal dated February 16, 2023.
6. In the Memorandum of Appeal, the Appellant amongst other grounds asserts that the institution, hearing and determination of the case Rent Restriction Case No E1125 of 2022 was unconstitutional, illegal, null and void ab initio as the subject matter of the case does not relate to a Landlord/Tenant relationship. He further accused the Tribunal and its vice-chairman of erring in law and fact by entertaining and hearing a case in which the Tribunal lacked jurisdiction.
7. It is the Appellant's case as further stated in the Memorandum of Appeal that the vice-chairman of the Tribunal went against a previous award issued by the chairman on February 7, 2023. The two diametrically conflicting awards of the Tribunal according to the Appellant, make it impossible for any party to determine which of the awards to comply with.



8. The Appellant alleges that the vice-chairman of the Tribunal failed to acknowledge and consider the fact that a valid sale by way of public auction had taken place and that the Appellant was now the duly registered owner of the property hence no Landlord/Tenant relationship existed or could be inferred between the Appellant and the Respondents.
9. Alongside the Memorandum of Appeal, the Appellant filed the Notice of Motion application dated January 16, 2023 seeking an order of temporary injunction to restrain the Respondents or their agents/ employees/or anyone acting on their behalf from accessing, entering, breaking into, taking possession, claiming ownership or otherwise interfering with the suit property pending hearing and determination of the appeal.
10. In the application, the Appellant too prays that this court be pleased to vacate, set aside and or annul the award and orders of the Rent Restriction Tribunal issued on February 14, 2023. In other words, the Appellant prays that this court allows his appeal summarily.
11. On their part, the Respondents too filed the Notice of Motion application dated February 22, 2023 seeking amongst other orders, a temporary injunction against the Appellant and an order of stay of proceedings in this matter pending the hearing and determination of High Court Appeal 006/2022, Sagal Investment Ltd v Gulf African Bank Ltd & Garam Auctioneers & others, before the commercial division of the High Court at Nairobi.

Court's directions

12. The court's directions were that both applications be considered concurrently and be canvassed by way of written submissions. Both sides have complied and I have had the opportunity to read the submissions.

Analysis and Determination

13. From my above analysis, it is evident that the case and the applications before the tribunal have not been fully determined yet. Indeed, the orders that the Appellant has appealed from were ex parte orders. Neither the application by the Respondents nor that by the Appellant has been heard inter partes by the Tribunal. Instead of waiting for the inter partes hearing, the Appellant opted to file this appeal concurrently with the application now before me.
14. This raises a serious legal question on exhaustion of established statutory dispute resolution mechanisms that must be determined forthwith.
15. The Constitution of Kenya, 2010, under Article 159(2)c enjoins the courts in exercising their judicial authority to amongst other issues be guided by the principle that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted. Amongst the alternative dispute resolution mechanisms recognized under the Constitution are the Tribunals; which Article 169(d) of the Constitution requires parliament to establish. The Rent Restriction Tribunal is one such local tribunal established under the Rent Restriction Act, cap 296, laws of Kenya.



16. The doctrine of exhaustion requires that where a dispute resolution mechanism exists outside the courts, it be exhausted before the jurisdiction of the court's is invoked (*Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others [2015] eKLR*). The Court stated that; -

' It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of courts is invoked.'
17. The Court of appeal in upholding the doctrine of exhaustion as a sound doctrine expressed the view that Courts ought to be a fora of last resort and not the first port of call any time a dispute arose.
18. In this instance, the dispute resolution mechanism under the Rent Restriction Tribunal – that the Appellant subjected himself to, has not been exhausted. I must reiterate that it is the Appellant who initiated the case before the Tribunal. He was happy with the Tribunal's decision until it made a decision in favour of the Respondents. He then took a total turn around accusing the Tribunal of dealing with the matter in which it had no jurisdiction.
19. The appellant should wait for the inter partes determination of the applications pending by the Tribunal before invoking the jurisdiction of this court.
20. In any event, if the Appellant believes that the Tribunal has no jurisdiction as he states in his application, he is within his rights as a Plaintiff to withdraw the case and the impugned orders will automatically cease to have effects.
21. The court therefore declines the Appellant's application which is an invitation to unprocedurally interfere with the exercise of the mandate of a statutorily established Tribunal. I hereby strike out the Appellant's application for violation of the doctrine of exhaustion.
22. In regard to the Respondents' application, the Respondents are riding on the Appellants appeal. They have not filed a cross-appeal upon which their application would be based. Their application therefore lacks legal basis and foundation. In any case, the Respondents are still enjoying similar orders (issued by the Tribunal) as the ones they are now seeking before the court.
23. I strike out the Respondents' application too.
24. That being the case each party shall bear its own costs.

Dated, Signed and Delivered at Nairobi this 16th day of June 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mutava for the Appellant/Applicant.

Mary Wanjiku for the Respondents.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

