



Daistar Autocare Center & 2 others v Ghatahora (Environment and Land Appeal E028 of 2023) [2023] KEELC 20083 (KLR) (27 September 2023) (Judgment)

Neutral citation: [2023] KEELC 20083 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E028 OF 2023
JA MOGENI, J
SEPTEMBER 27, 2023**

BETWEEN

**DIASTAR AUTOCARE CENTER 1ST APPELLANT
PARAMJIT SINGH 2ND APPELLANT
GURMUKH SINGH 3RD APPELLANT**

AND

PRADEEP SINGH GHATAHORA RESPONDENT

(Being an Appeal from the Ruling of the Chairman Business Premises Rent Tribunal at Nairobi – Hon Cyprian Mugambi Nguthari on 30th August, 2021 Tribunal Case No. 828 of 2019 (Nairobi))

JUDGMENT

1. The Appellant herein filed an appeal to this Court against the Judgment of the Chairman of the Business Premises Rent Tribunal and raised the following grounds of Appeal: -
 1. The Honorable Chairman of the Tribunal erred in law and fact by failing to appreciate the Appellant’s Notice of Preliminary Objection objecting to the Respondent’s capacity to increase rent and/or institute the reference before the tribunal and the argument in support thereof
 2. That the Honorable Chairman of the Tribunal erred in law and fact in failing to consider the argument in the Appellants’ submissions.
 3. That the Honorable Chairman of the Tribunal erred in law and fact by holding that the Respondent herein has capacity to solely increase rent and/or institute the tribunal case while the property in dispute is owned by joint tenants, both deceased, without involving either the administrators of the estate of the co-tenant or his co-administrator.



4. That the Honorable Chairman of the Tribunal erred in law and fact by dismissing the Appellant's Notice of Preliminary Objection.
2. The appellant is seeking the following orders from the court:
 1. That this Appeal herein be and is hereby allowed and the Ruling of the Honorable Chairman in the Business Premises Rent Tribunal at Nairobi Tribunal Case No. 828 of 2019 dismissing the Appellant's Notice of Preliminary Objection be and is hereby set aside
 2. That the Appellants be granted the costs of this Appeal and the costs of the proceedings in Tribunal Case No. 828 of 2019 (Nairobi)
 3. That this Honorable Court be pleased to make any further orders and directions that it may deem fit and just in the circumstance of the case.
3. The Court gave directions that the appeal be disposed of by way of Written Submissions. The Appellant filed its submissions dated 29/03/2023. The Respondents filed their submissions on 30/06/2023.
4. The Appellant is a tenant of the Respondent in a premises located along Enterprise Road in Nairobi. On 30/07/2019 the Respondent issued a notice of rent increment from Kshs.65,000/= to Kshs.180,000/= per month pursuant to section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act. The Appellant did not agree with the increment. A reference was filed at the Business Premises Rent Tribunal opposing the notice to increase rent issued by the respondent/landlord in respect of the premises, plot No. 4678 and LR No. 209/4678.
5. The Respondent filed a Replying Affidavit and averred that he opposed the Appellant's Reference dated 15/08/2019 and prayed that the Honorable court would allow the rent increment since according to the Valuation Report he filed annexed as A1 to the Replying Affidavit from M/S Fortune Realtors the Appellant had been paying rent below the market rent for years. Hence the Respondent Landlord was entitled to the fair market rent which was an increase from Kesh 70,000 that the appellant was paying to Kesh 180,000 excluding VAT as per the notice issued by respondent/landlord on 1/10/2019 which was annexed and produced as A2.
6. The appellant/tenant raised a preliminary objection to the respondent/landlord's notice of 30/07/2019 contending that the respondent's unilateral action of altering the terms of the lease through increase of rent offended the law since he lack capacity.
7. The Tribunal Chairman delivered a ruling on the preliminary objection dismissing it with costs to the landlord/respondent and this is the subject of this appeal. The ruling is what triggered the Appellant to file this appeal in which it raises four grounds. From the grounds of appeal, it is clear that the Appellant is contending that the Chairperson of the Tribunal erred by finding that the respondent had capacity to solely increase rent and/or institute the tribunal case while the property in dispute is owned by joint tenants, who are both deceased without involving either the administrator of the estate of the co-tenant or his co-administrator.
8. I have gone through the ruling delivered by the Chairperson of the Tribunal as well as the submissions of the parties to this appeal. The issues which emerge for determination are; one, whether the respondent herein solely had the power to increase rent and/or institute the tribunal case and two, whether the Chairman of the tribunal erred in law and fact by dismissing the Appellant's Notice of Preliminary Objection.



9. As a first appellate Court, I am expected to evaluate the evidence tendered and arrive at my own conclusion. It is important to note that there was no oral evidence tendered in this case. The Tribunal Chairman relied on the written submissions of both the Tenant and the Landlord to determine the preliminary objection filed by the appellant/applicant.
10. As already stated, this being a first appeal, the court is required to re-evaluate the evidence tendered and make its own findings and conclusions. Exercise of that appellate jurisdiction is guided by well-established principles. The appellate court will ordinarily not interfere with the trial court's findings of fact unless it is demonstrated that the findings are based on no evidence or on a misapprehension of evidence or the trial court acted on wrong principles in reaching the findings. See *Ephantus Mwangi & Another vs. Duncan Mwangi Wambugu* (1982) IKAR 278.
11. I have gone through the Appellants submissions. The Appellant's Counsel N.K Mugo & Company Advocates state that the genesis of this appeal lies in the dismissal by the Tribunal Chairman of the Appellant's Notice of Preliminary Objection dated 1/07/2020 where the Appellant questions the capacity of the Respondent to alter the terms of the respective tenancies.
12. The appellant filed references and the Notice of Preliminary Objection and in the appeal the appellant has identified one issue for the appeal which was that the learned chairman erred by holding that the respondent could alter terms of the tenancies for a property owned by joint tenants both deceased without involving the administrators of the co-tenant or his co-administrators.
13. The appellant in their submissions have relied on section 91 (6) of the *Land Registration Act*, Section 79 and 83 of *Law of Succession Act* and the case of *Re Estate of Makokha Idris Khasabuli (Deceased)* [2019]eKLR. It was the appellant's submission that Gurnam Singh (deceased) solely made decisions concerning the suit property without involving Pritam Kaur who was domiciled in the United Kingdom.
14. The Respondent/ Landlord on his part identified three issues in his submissions touching on capacity of respondent/landlord to issue Notice of alternation of terms of tenancy, secondly whether the respondent filed any suit or references filed by the appellants and whether this court can grant prayers sought in the preliminary objection dated 1/07/2020.
15. It was his submission that the appellant/Tenant admitted to existence of tenancy by filing the reference and or suits by Business Premises Rent Tribunal Case No. 826 of 2019 and that the respondent never filed any suit. Further, that the tenant/appellant admitted to paying all rent to the account of the deceased Gurnam Singh where respondent is administrator and at all times during subsistence of the tenancy the appellants have paid rent and dealt with the late Gurnam Singh who managed the property for himself and for the estate of Jaswant Singh.
16. He submitted that the appellants have always been aware that Pritam Kaur was a resident in the United Kingdom and they never challenged the process and engagement with Gurnam Singh (deceased) as the landlord and now the respondent as the administrator landlord.
17. The respondent referred to Cap 301 section which defines a Landlord as;

“landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises ...”
18. Therefore, he submitted that that the tenants have always paid rent into the account of Gurnam Singh and there is not evidence adduced that co-administrator nor co-registered owner has objected to rent being paid to Gurnam Singh.



19. Further that all documents by appellants show that the Respondent/Landlord as administrator of the late Gurnam Singh and increase of rent is for the benefit of his estate hence the appellant never provided any letter of objection. Therefore, the Preliminary Objection prayers cannot be granted since the Appellants filed the references themselves and it is not the Landlord who did so and the appeal is an attempt to delay the outcome of the said references.

Determination

20. Both the appellant and the respondent filed a valuation reports which have arrived at different proposed rental value of the premises. This issue was not litigated at the tribunal since the preliminary objection took precedence.

21. I am aware that the law allows a landlord to review rent after two years from a previous assessment. I therefore note from the historical background that there was nothing wrong in the Respondent asking for a review of rent. Further the learned chairman in his ruling referred to the landlord/tenant relationship that existed between the late Gurnam Singh who was the administrator and the landlord as envisaged under Cap 301 of the Laws of Kenya.

22. Whereas the appellant complains that the co-administrator was not involved there is not evidence that this non-involvement was prejudicial to the tenancy relationship which continued flawlessly and the tenants paid their rent with not problem at all. As already observed the rent increment will be to the benefit of the landlord and not to the detriment of the tenancy at all. Further, the co-administrator is dealing with the property held in common to the advantage of the tenancy in common. Therefore, I hold that the respondent had all the right to issue the notice of alteration of terms relating to Plot No 4678 for LR 209/4678 dated 15/08/2019.

23. Having established that the Landlord had the right to issue the notice, it follows that the dismissal order of the preliminary objection issued by the chairman was within the precincts of the law to determine the issues placed before it and make a finding based on it. Ground one and four of the memorandum of Appeal must fail.

24. The allegation by the Appellant that the tribunal chairman failed in considering the arguments in the Appellant's submissions has not been demonstrated at all.

25. Based on the foregoing and in light of the record of Appeal and all the material placed before me, it is my finding that the Appeal is unmerited. It is dismissed with costs to the Respondent.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27TH DAY OF SEPTEMBER 2023.

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MOGENI . J

JUDGE

In the virtual presence of:-

Ms. Shabana for the Respondent

Mr Ondiek for the Applicant

Caroline Sagina : Court Assistant

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MOGENI . J
JUDGE

