



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. APPEAL NO. 21 OF 2016

THOMAS MANTHI MWANIA (*Representative of the Estate of*
NGUGWA MANTHI.....APPELLANT

VERSUS

AGNES KANYIVA MUSYOKA.....RESPONDENT

(An Appeal from the Judgment and Decree of the Hon. Mr. Mbichi Mboroki,

in Tribunal Case No. 68 of 2014, delivered on 12th February, 2016)

JUDGMENT

1. The Appellant herein is aggrieved by the decision of the Chairman, Business Premises Rent Tribunal in which the Tribunal held that the Respondent (*the Tenant*) should not be harassed, intimidated or evicted from Plot No. 20 Matuu pending the hearing of the case.
2. In his short Ruling dated 12th February, 2016, the Tribunal found that the Respondent had established a prima facie case with chances of success and was therefore entitled to protection.
3. The Tribunal further awarded to the Respondent costs of Kshs. 25,000.
4. In a short Memorandum of Appearance, the Appellant averred that the Tribunal failed to take cognizance of public interest in evaluating the notice given to the Respondent by the Ministry of Health and that in reaching at his decision, the Chairman of the Tribunal engaged in conjecture and speculation.
5. In his submissions, the Appellant's advocate submitted that the Appellant received a statutory notice from the Ministry of Health directing her to carry out specific repairs on the suit property and that the Appellant issued to the Respondent a notice to vacate the suit premises to allow for the renovations as directed by the health officials. That is when the Respondent filed the dispute with the Tribunal.
6. Counsel submitted that the evidence that necessitated the Appellant to issue to the Respondent the statutory notice was ignored by the Tribunal; that the Tribunal did not answer the question as to why a notice was issued in the first place and that the provision of Section 162 of the Public Health Act was ignored.
7. The Respondent's counsel submitted that the Tribunal does not operate as a court to implement Public

Health Notices; that costs follow the event and that the Appeal is unmerited.

8. The matter before the Business Premises Rent Tribunal was prompted by the notice that was issued by the Respondent's advocate dated 23rd October, 2014 directing the Appellant to vacate the suit premises for renovation.

9. After filing the reference with the Tribunal, the Respondent filed an Application dated 20th November, 2014 seeking for the following orders:

“2. That the landlord and/or his servants and/or employees, agents be prohibited forthwith by this court from unlawfully intercepting/harassing, intimidating and/or evicting, closing or threatening/interfering/ tempering, demolishing, disconnecting electricity power, disposing by and/or in any manner whatsoever with the Applicant's quiet occupation and lawful enjoyment of suit premises at Plot No. 20 Matuu pending hearing of this case.

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4. The costs of the Application to be provided for.

10. The Appellant did file a Replying Affidavit in respect to the suit giving several reasons as to why he had issued to the Respondent a notice to vacate the suit premises.

11. In the Affidavit, the Appellant deponed that he had received a notice from the Public Health Officers requiring him to repair the premises.

12. The Appellant further deponed that it was not possible to carry out renovations as directed by the Public Health Officers while the Respondent was in occupation of the premises.

13. The parties then filed their respective submissions in respect to the Application dated 20th November, 2014 which was heard by way of written submissions.

14. The Application that was before the Tribunal was interlocutory in nature. Indeed, and as was observed by the Tribunal, all that the Respondent was seeking in the Application was for protection pending the hearing of the case.

15. It was therefore in the discretion of the Chairman to decide if indeed the Respondent had established a prima facie case with chances of success for the purpose of issuing an injunction pending the hearing of the case.

16. It is only after making an inquiry that the Tribunal could have made a final decision as to the legality of the notice that had been issued to the Tenant by the Landlord to vacate the suit premises.

17. Considering that the case that was before the Tribunal has not been heard, I will not at this stage venture into the merits of the Appellant's notice to the Respondent.

18. However, the order of injunction pending the hearing of the case would remain in place considering that the suit before the Tribunal will be rendered nugatory if the Respondent is to be evicted from the premises before the matter is heard.

19. However, the order by the Tribunal that the Appellant should pay costs of Kshs. 25,000, and that in default the same to be deducted from the payable rent is not fair and just in the circumstances.

20. I say so because the Tribunal did not state how it arrived at a figure of Kshs. 25,000 as the payable costs for an Application seeking for temporary injunctive orders.

21. Having issued a temporary injunction pending the hearing of the case, the issue of costs should have awaited the outcome of the main suit.

22. Considering that the Chairman of the Tribunal did not show how he assessed the costs of Kshs. 25,000, and in view of the fact that the matter is still pending before the Tribunal, I shall set aside the order for costs.

23. The original file should be returned to the Business Premises Rent Tribunal for hearing and determination.

24. For those reasons, I partially allow the Appeal herein by setting aside the award of costs of Kshs. 25,000.

25. Each party shall bear his/her own costs for the Appeal.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE