



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL APPEAL NUMBER 177 OF 2010**

**MARY NJAMBI KARUGA.....APPELLANT**

**t/a PRIME ROSE SALON & KINYOZI**

VERSUS

**SAMUEL MWAI NYAGA MUCHIRI .....1<sup>ST</sup> RESPONDENT**

**AIRWAYS AUCTIONEERS.....2<sup>ND</sup> RESPONDENT**

***(An appeal from a judgment and order of Hon B. Atiang' Senior Resident Magistrate dated  
16<sup>th</sup> June 2010 in civil suit number 525 of 2006)***

**JUDGMENT**

1. The appellant filed this appeal on the 29<sup>th</sup> June 2010. Directions on the hearing of the same was taken before the Judge on the 31<sup>st</sup> June 2015 whereof both the appellant and the Respondent agreed to file and exchange submissions on or before the 30<sup>th</sup> October 2015. By the 1<sup>st</sup> December 2015, the respondent had not filed his submissions. The court made an order that the respondent was at liberty to file its submissions before the judgment date slated for the 26<sup>th</sup> May 2016. At all times both parties had the advantage of representation by counsel.

As at 15<sup>th</sup> May 2016 when this court undertook the task of preparing the judgment, the respondent had not filed its submissions. The Judgment is therefore being prepared without the benefit of the respondent's submissions.

2. The appellant was the plaintiff in the trial court. Her claim was partially dismissed by the trial magistrate who held that she was in rent arrears in the sum of Kshs.107,500/= with interest.

The first Respondent succeeded in his counter-claim and an eviction order was issued against the appellant effective on the 30<sup>th</sup> June 2010. The court further ordered the second respondent to return the attached goods to the appellant not later than the 30<sup>th</sup> June 2010. The court directed that each party to bear its own costs of the case.

3. Being dissatisfied with the Judgment of the trial court, the appellant filed this appeal upon the following grounds:

(1) *The trial Magistrate erred both in law and in fact by disregarding the Appellant's pleadings and instead granting the Respondent's counter claim.*

(2) *The trial Magistrate erred both in law and in fact by failing to consider the submissions filed by the Appellant together with the authorities quoted therein.*

(3) *The trial Magistrate erred both in law and in fact by failing to hold that there having been a contractual relationship between that the first respondent and the appellant the first respondent had breached the contract.*

(4) *The trial Magistrate erred both in law and fact by failing to consider the fact that the Respondents were vicariously liable for conversion and illegal distress.*

(5) *The trial Magistrate erred both in law and in fact by failing to consider that, the Appellant suffered far greater loss than the one claimed by the first Respondent which compensation the trial Magistrate failed to order for.*

(6) *The trial Magistrate erred both in law and in fact by disregarding the Appellant's evidence but delving too much on the Respondent's counter claim.*

and sought that the said judgment be set aside and that the Respondent be ordered to compensate the Appellant for loss of her property in the sum of Kshs.200,000/= and costs of the appeal.

4. This court has considered the pleadings and evidence tendered by both parties in the lower court.

It is evident that the cause of action was a Landlord-tenancy relationship between the appellant and the Respondent herein.

It is trite law that jurisdiction is everything, and without it, the court ought to down its tools the moment it comes to its notice that it has no jurisdiction. See **Owners of Motor Vessel "Lillian S" -vs- Caltex Oil Limited (1989) e KLR and Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank (2012) e KLR**. A court of law can only exercise jurisdiction conferred upon it by the Constitution, statute or by both.

5. Disputes pertaining to the relationship between a tenant and a landlord in respect of a commercial property as in the case before the trial court and in this appeal, and where the tenancy period is for not more than five years, is governed by the **Landlord and Tenant(Shops, Hotels and Catering Establishment) Act, Chapter 301 Laws of Kenya** that was established to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected **Section 2** of the **Act** provides that:

***"A tenancy of a shop which has not been reduced into writing or has been reduced into writing and is for a period not exceeding five years, and which contains provisions for termination within the five years is called a controlled tenancy."***

Issues and disputes arising from such tenancy are heard and determined by a tribunal established under the said Act, and known as the Business Premises Rent Tribunal and under **Section 12** of the **Act** it has been granted powers to determine all disputes arising therefrom.

If a party is aggrieved by a decision of the Business Premises Rent Tribunal it has a right to lodge an appeal to the Environment and Land Court (previously to the High Court).

6. From the nature of the matter before the trial court, it is evident that the dispute ought to have been filed in the first instance at the Business Premises Rent Tribunal. Filing the case at the Chief Magistrate's Court was a misdirection as that court has no jurisdiction to hear any dispute concerning a landlord and tenant so long as that relationship existed. Indeed, upto the judgment date on the 16<sup>th</sup> June 2016, that

relationship was in existence.

7. I have seen the Tenancy Agreement executed between the two parties. It talks of a tenancy over a premises known as **Plot No. 113, Mwariki Estate in Nakuru Municipality**. The premises was comprised of a front shop and a store, with a monthly rent of Kshs.2,500/=. The period of the tenancy is not indicated, and therefore assumed to be a month to month tenancy.

The above being the subject matter before the trial court, and that court having no jurisdiction to hear and determine the same, the respondent had rightly issued a notice for termination of the tenancy to the appellant vide a notice dated the 26<sup>th</sup> February 2007 under the provisions of **Chapter 301**.

It is not clear from the record whether that reference was followed up or whether the proceedings pursuant thereof went through.

8. The plaint was filed on the 26<sup>th</sup> March 2006 and it seems that before the case was concluded the first respondent filed the reference at the Business Premises Rent Tribunal as indicated above. It must have dawned upon him that the trial court to which the matter was pending did not have the requisite jurisdiction to hear and determine the tenancy dispute.

It is a further finding that the trial court had no jurisdiction to hear the case and what follows, in line with precedence and the law, is that any proceedings taken by a court without jurisdiction is a nullity. See the **“Lillians”** case and **Kamau** case above.

It is a further finding by this court that the suit filed in the trial court, having been filed in a court not seized with the necessary statutory or Constitutional Jurisdiction then it was a nullity *ab initio* and nothing can flow from null and void proceedings. See also **Karisa Chengo & Others -vs- R (2015) e KLR**.

To that extent then, this court will not go into the merits or otherwise of the appeal, as doing so will be perpetuating proceedings that are null and void.

9. I find it interesting and perturbing that counsel for both parties in this case, both in the trial court and in this appeal before me did not raise the issue of jurisdiction which of necessity ought to be raised at the first instance. It is high time that advocates and litigants take matters of jurisdiction of the various courts, The High Court, The Environment and Land Court and Employment, Labour and Industrial Relations seriously and discern from the onstart which court they ought to file their cases to avoid filing cases in courts without jurisdiction which translates in wastage of **not** only precious court time but also the litigants resources and time as well.

10. For the above reasons, this court makes the following determination:

- 1. That the case before the trial court being **Nakuru CMCC No. 525 of 2006** was incompetently filed in a court without jurisdiction.*
- 2. That the trial court's proceedings in respect of **Nakuru CMCC No. 525 of 2006** are declared null and void **ab initio** for lack of jurisdiction.*
- 3. That this appeal arising from proceedings that are null and void is also declared null and void.*
- 4. That consequently the appeal and the trial court case being **Nakuru CMCC No. 525 of 2006** are both declared null and void and are hereby struck out.*
- 5. As the Respondent has not participated in the appeal proceedings, there shall be no orders as to costs.*

**Dated, signed and delivered in open court this 26<sup>th</sup> day of May 2016.**

**JANET MULWA**

**JUDGE**