



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL APPEAL NO. 7 OF 2002

HUSSEIN GULABKHAN

ANWAR KHAN MURADHHAN

ZAKIYA A HASSANALI

MASSODKHAN HABIBKHAN

BAKHIT BIN SAAD AL-MAHRY

MOHAMED NAZIR MOHAMED

AMINA M ABOO SALIM

MOHAMED SALIM

C.M JINA

NARANDAS ZAVERCHANDAPPELLANTS.....APPELLANTS

VERSUS

MARKET MANSIONRESPONDENT

J U D G M E N T

Appeal from the Ruling of the Rent Restriction Tribunal (Hon. Chair Emily Ominde) in Mombasa Rent Restriction Tribunal case No. 66 of 2000 dated 20th December 2001

1. HUSSEIN GULABKHAN and ten other (appellants) are tenants of the premise on Plot No. 484/XVIII Mwembe Tayari, Mombasa. That property is registered in the name MARKET MANSION (respondents)
2. This appeal is directed against the Ruling of 20th December 2001. By that Ruling the Rent Restriction Tribunal (the tribunal) assessed the standard rent of the appellants.
3. Appellants presented the following grounds in their appeal.

a) That the learned chairperson erred in law in allowing on record an application that was manifestly defective.

b) That the learned chairperson erred in law in failing to make a finding that the respondent's application as brought was in contravention of both the provisions of the Civil Procedure and Rent restriction Acts.

c) That the learned chairperson erred in law in adopting a procedure that was wholly erroneous in dealing with the respondent's application

d) That the Tribunal erred in assessing rent in contravention of the Rent Restriction Act and/or al other relevant Laws and in reaching the figures that it did.

4. Learned counsel for the appellants in his submission stated that appellant's appeal is only against the procedure adopted by the Tribunal in assessing the rent and that it was not against the quantum of rent assessed.

PROCEEDINGS BEFORE THE TRIBUNAL.

5. The Tribunal's assessment officer prepared a report dated 25th September 2000 assessing the rent for each type of flat on the premises. The respondent landlords file a Notice of Motion dated 30th October seeking the standard rent of the appellants be increased to such amount as the court considered fit in all circumstances.

6. Before the Tribunal could entertain the said application the appellants raised a preliminary objection, and filed an application which were both dismissed.

7. The preliminary objection raised three objections but only one of those objections is pertinent to this appeal. That objection was in the following terms:

"The assessment officers report dated 25.9.2000 be struck out and/or expunged from the record of the Tribunal as it is prepared without the order of the Tribunal."

The ground of objection was not entertained by the Tribunal when it issued its Ruling on 25th April 2001 because the Tribunal found that the ground was not a pure point of law and accordingly could not be a basis for preliminary objection.

8. The appellants were undeterred by that Ruling and filed a Notice of Motion application dated 22nd November 2000. That application raised exactly the same objection as reproduced above but further sought the assessment report to be expunged.

9. The application of the appellants dated 22nd November 2000 was dismissed by the Tribunal's Ruling of 11th October 2001.

THE APPEAL

10. The crux of this appeal, as was confirmed by the learned counsel for the appellants, is the procedure followed by the tribunal before the assessment report was prepared.

11. Appellant's learned counsel submitted that the Tribunal as provided under Section 3 (2) (a) (iv) of the Rent Restriction Act Cap 296 ought to have determined the standard rent. That Section provides:

(2) Notwithstanding anything contained in the definition of standard rent-

(a) Where the tribunal is satisfied that the standard rent would yield and uneconomical return to the Landlord because of –

(i).....

(ii).....

(iii).....

(iv).....the fact that it does not yield a fair capital return on the costs of construction and market value of the land as at 1st January, 1981, or that, in the absence of any indication that the purchase price paid by the landlord was excessive, it does not yield a fair capital return on that purchase price, the tribunal may determine the standard rent to be such amounts as, in all the circumstances of the case, it considers fair;

12. Appellant's learned counsel argued that it is the tribunal which was obligated to determine the standard rent of the premises and that it was not the assessment officers who could make that determination.

13. To buttress that argument counsel referred to Section 25 of Cap 296, which provides:

Where, for the purpose of determining the standard rent, an estimate of the cost of construction or market value has been made by order of the tribunal, the tribunal shall forthwith send written notification to the landlord and the tenant, or their representatives that the details of the estimate are available for their information and that before the standard rent is determined any such party or his representative may appear before the tribunal on a date to be specified in the notification and object to the estimate

14. Learned counsel faulted the assessment report for having been done without the tribunal's order. In making that submission counsel was isolating the following Provisions in Section 25 reproduced above:

"...Where, for the purpose of determining the standard rent, and estimate of the costs of construction or market value has been made by order of the tribunal ..."(underlining mine)

15. In isolating the above provision of Section 25 appellants lay emphasis on the word "by order of tribunal" and argued the assessment report was prepared without the order of the Tribunal. To that extent appellant argued that the appeal be allowed.

16. The Respondent's Learned Counsel submitted that the assessment officer was working under the authority of the Tribunal and that therefore the provisions of section 25 were complied with.

17. The Tribunal, when the above arguments were presented before it, it its well considered Ruling, considered the requirement of section 25 as follows.

"The Tribunals functions are not restricted to the orders, judgments, rulings, decrees etc that are delivered by the presiding chairman but that the Tribunal also has an administrative area headed by an Executive Officer and in all circumstances where the Tribunal has been moved by a party, it is this administrative machinery that moves first for and on behalf of the Chairman and once they have completed their process, the chairmn then presides over the matters and adjudicates upon the matters by applying the law as per the statue to the facts as brought together by the administration to reach decision that is then judicial. Mrs. Ali therefore has jumped the gun. Section 25 has been duly complied with administratively as is envisaged by the said section viz;

- An application for determination (review of standard rent has been made by the landlord.***
- For the purpose of this application, the executive officer on behalf of the Chairman issued a commission dated 20/9/00 under order No. XXVII to the Assessment Officer to proceed and assess standard rent based on the relevant particulars as envisaged by section (1)(n) or (m) or section (a)(b) or(c) of the said commission.***
- The Assessor subsequently wrote to the tenants informing them of his intention to carry out this purpose and requested that they avail themselves.***

- *Thereafter he prepared the report the subject matter application. The same is dated 25/9/01.*
- *The same having been filed the assessment was then listed for hearing and it is this stage where we now are.*

The Tribunal through the chairman is now called upon to test the estimates as provided in the report and decide whether the same are reasonable or not.”

18. We wholly support that finding of the Tribunal. Similar in the High Court, for example, there are administrative actions undertaken by the Deputy Registrar, which actions are valid.

19. To further support the Tribunal’s finding we I add that section 3 of Cap 296, the interpretation section, defines the Tribunal to

“mean a Rent Restriction Tribunal established under section 4 and in relation to any particular premises”

20. Section 4(1) gives the power to the Minister to establish such as Rent Tribunals. Such a Tribunal consists of the administrative arm and the judicial arm.

21. It follows that the Tribunal cannot be said to only be composed of the chair person, which is what we understood the appellants to argue. It further follows that an order made by an executive officer, as in this case, to the assessment officer to prepare an assessment report is an order of the Tribunal as contemplated under section 25.

22. It is as a result of the above finding that we hold that there is no merit in the appeal before us. The same is hereby dismissed with costs to the respondent.

DATED and DELIVERED at MOMBASA this 24th day of September, 2015.

JUSTICE A.EMUKULE

JUSTICE MARY KASANGO

24.9.2015

Coram

Before Justice Mary Kasango

Court Assistant:-

For the Appellants:-

For the Respondent:-

Court:

Judgment delivered in their presence/absence in open court.

MARY KASANGO

JUDGE