



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 626 OF 2004**

**JOHN KARIUKI MAINA.....APPELLANT**

**VERSUS**

**WILFRED M. KAMITA.....RESPONDENT**

*(An appeal of the judgement and order of the Hon. Chairman of the Rent Restriction Tribunal Court at Nairobi the Hon. Jacob Obonya ESQ. In respect of the Rent Restriction Tribunal Court at Nairobi Civil Case No. 525/93 that the said Chairman made and delivered on 16/3/94)*

**JUDGEMENT**

1. On 16<sup>TH</sup> March 1994, Wilfred M. Kamita, the Respondent Herein, obtained judgement in his favour before the Rent restriction Tribunal, Nairobi, against John Kariuki Maina, the Appellant herein. The aforesaid judgment was in the following terms:
  - i. **Ksh.5,000/=**
  - ii. **An order of vacant possession from plot no. SSS9/11 Makongeni, Thika**
  - iii. **Costs assessed at ksh.2,000/=**
2. Being aggrieved the Appellant preferred this appeal and put forward the following grounds in his amended memorandum of appeal:
  1. ***That the learned chairman erred in law, for issuing the said judgement and orders to the Respondent, causing the Respondent to attach the appellant household and the appellant to be beaten by the Respondent and his agents and the appellant being evicted from the said premise while the appellant had paid the respondent rent through the same court order that the same chairman issued on 30/7/94.***
  2. ***The learned chairman also erred in law in his said judgement and orders where he found the respondent having not met the requirement of rent restriction Tribunal Court Act that required the Respondent to have furnished the appellant with the statement of the assessed rent assessed by the rent assessors department and Renal Book and Tenancy agreement and dismiss the Respondent's case with costs.***
  3. ***The learned chairman also erred in law in his said judgement and orders where he said that the appellant admitted to have not paid the rent for the month of January, 1994 whereas there was no time the appellant admitted to have not paid any rent for the Respondent as the appellant had paid he Respondent rent as per the said court order which was issued by the same court on 30/7/94 for the appellant to be paying the Respondent rent through Rent Restriction Tribunal Court Rent collection department.***
  4. ***The learned chairman also erred in law in his said judgement and orders where he said that, the appellant was not sure whether ksh.5,000/= was paid to the respondent or not as the***

***appellant was sure that the said Kshs.5,000/= was paid to the Respondent in a normal way or the way other rents were paid to the respondent prior to the order that directed the appellant to be paying the respondent rent through Rent Restriction Tribunal Court Rent Collection department.***

3. When the appeal came up for hearing before this court, parties with the approval of the court recorded a consent order to have the appeal disposed of by written submissions. We have re-evaluated the case that was before the Rent Restriction Tribunal herein after referred to as the Tribunal. We have also considered the rival written submissions. Before we delve deeper into the substance of the appeal we wish to first set out in brief, the history behind this appeal.
4. The Respondent leased his residential premises standing on plot no. SSS9/11 Makongeni, Thika, to the Appellant at a monthly rent of ksh.1,400/=. In the month of March 1993, the Respondent issued a month's notice to the Appellant to terminate the tenancy on the basis that the tenant was in arrears of rent and that he had sublet the premises without the landlord's consent. The Appellant did not comply with the notice, prompting the respondent to file a suit against the rent Restriction Tribunal. The case was heard and in the end the Rent restriction Tribunal awarded the respondent judgement as aforementioned. The Respondent eventually had the decree executed against the respondent.
5. Having set out the background of this appeal we now wish to consider the merits or otherwise of this appeal. In the first ground of appeal, the appellant has complained that the tribunal erred in arriving at its decision which allowed the respondent to execute the decree by attachment of his household goods.
6. He also alleged that the appellant was evicted and beaten up whereas he had paid the respondent by depositing the money with the Tribunal. The appellant identified the receipts he was issued by the Tribunal to acknowledge payments of such deposits. The appellant argued that having paid ksh.9240/= within a period of 7 months i.e between August 1993 and February 1994 vide the Tribunal's order issued on 8<sup>th</sup> July 1993. The tribunal should not have authorised the Respondent to execute the decree. In his submissions, the Respondent denied the appellant's allegations. The Respondent stated that there is no evidence that the appellant was ever assaulted. The Respondent further denied the allegation that the appellant's properties were attached and sold.
7. We have on our part re-evaluated the case that was before the tribunal. The record shows that judgement against the appellant was delivered by the Tribunal on 16<sup>th</sup> March 1994. The recorded evidence also show that the appellant made frantic efforts to pay the outstanding rent to the Respondent but the Respondent flatly refused to accept the Appellant's overtures.
8. In the judgement the tribunal actually directed the Appellant to vacate the premises by 1<sup>st</sup> June 1994. It would appear the Respondent proceeded to execute the decree forcing the Appellant to settle the outstanding rent. The record shows that the Tribunal issued an order on 8<sup>th</sup> July 1993 directing the Appellant to continue depositing rent with the Tribunal presumably when the Respondent refused to accept payment of rent from the Appellant.
9. We have already outlined the arguments of the parties. On this ground the Appellant is complaining that the Respondent should not have been allowed to execute the decree yet he was actually depositing rent with the tribunal. He has also argued that he was assaulted in the execution process of the decree. The record shows that on 22<sup>nd</sup> July 1994, the appellant appeared ex parte before the tribunal and made complaints similar to what he has now made before this court. The tribunal responded by clearly stating that it would order for the release of the rent deposits to the Appellant if it is shown that the Respondent had attached the Appellant's goods and recovered the arrears of rent. The Tribunal went ahead to also state that if the Respondent/Landlord received the deposited rent then he is ordered to release the appellant's/tenant's attached goods. It is clear to us that the appellant did not obtain a stay of

execution of the Tribunal's decree.

10. In the proceedings before the Tribunal, it is apparent that the Appellant did not tender any credible medical evidence to show that he was injured or assaulted in the process of executing the decree. The fact that the Appellant was depositing rent in the Tribunal Account did not bar the Respondent/landlord from executing the decree. We find the first ground of appeal to be without merit.

11. The second ground of appeal is to the effect that the Tribunal having found the Respondent to be in breach of Sections 9, 10 and 21 (1), (2) and (3) of the Rent Restriction Act, the Tribunal should have dismissed the Respondent's suit. The Respondent did not address us over this issue. In his judgment, the chairman of the Rent Restriction Tribunal noted that the Respondent did not keep a rent book. He stated the importance of the rent book as the document which would assist the Tribunal determine if rent has been paid. We agree with the submissions of the Appellant that under Section 21 of the Rent Restriction Act, the landlord is required to keep a rent book. In this case the Respondent/landlord did not keep one. We are also in agreement that the Tribunal's chairman correctly appreciated the importance of the landlord keeping rent book. It is basically to keep track of rent payments. Where a rent book is not kept, the landlord may not prove his claim for payment of arrears of rent. In the case before us, it is clear that the Appellant admitted before the Tribunal that he was in arrears of rent in the sum of ksh.5,000/= and the aforesaid award was made in favour of the Respondent.

12. We have already stated that the Respondent sought for payment of rent arrears and for vacant possession. Two grounds were put forward in support of the prayer for vacant possession. First, is that the tenant was irregular in making rent payments and secondly that the tenant had without the landlord's consent sublet the premises.

13. In our view the failure by the landlord to keep a rent book could not make the suit bad in law. It only affected the claim of rent. The Tribunal's decision cannot therefore be faulted.

14. The third and fourth grounds are interrelated. The

Appellant has argued that the Tribunal's chairman erred when he found that the Appellant admitted owing the Respondent rent arrears in the sum of ksh.5000/=. It is the Appellants submission that he paid rents to the Tribunal when the Respondent/landlord refused to accept payments of rent from the Appellant. The Appellant further pointed out that he paid the aforesaid sum to the Respondent through his wife. The recorded evidence shows that the Appellant admitted that he was not sure whether or not his wife deposited kshs.5000/= with the tribunal. He was categorical that he was not going to summon her to testify. The learned Tribunal chairman inferred that the Appellant admitted being in arrears of rent of kshs.5000/=. The Appellant had basically sent his wife to pay arrears of rent but he could not prove she did so. We have reconsidered the evidence as a whole and it is clear to us that the learned Tribunal chairman made a correct inference. We therefore find no merit in grounds 3 and 4 of the appeal.

15. In the end, we find no merit in this appeal. The same is ordered dismissed with costs to the Respondent.

Dated and delivered in open court this 28<sup>th</sup> day of October, 2015.

**J. K. SERGON**

**R. E. ABURILI**

**JUDGE**

**JUDGE**

In the presence of:

N/A for the Appellant

Gichohi H/b Miss Githinji for the Respondent