



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL APPEAL NO. 107 OF 2012

BETWEEN

JOSEPH NJUGUNA MUTUNGUAPPELLANT

AND

JOHN MAGONDU GITHINJIRESPONDENT

(Being an appeal from the Ruling of Hon. Onkwani H.M, RM,

delivered on 23rd January, 2013 in Karatina SPM's Court Civil Case No.71 of 2012)

JUDGMENT

1. By a plaint dated 24th November 2012, the appellant sued the respondent and pleaded that at all material times he was a tenant of the respondent at Room No.7 in LR No. Karatina municipality/Block 1/300 paying a monthly rent of Kshs.5000/= inclusive of water and that despite rent having been paid in full, the respondent illegally, forcefully and without colour of right locked up the plaintiff's premises and detained goods valued at Kshs.260,000/=.
 2. It was pleaded that the purported distress for rent was unlawful and the appellant therefore prayed for the following orders:-
 - a. *A declaration that the detention of the appellant's goods by the respondent amounted to unlawful detainer, thus is illegal, null and void;*
 - b. *An order for return of the said goods;*
 - c. *An injunction restraining the sale and/or disposal of the said goods pending hearing and determination of this suit;*
 - d. *A permanent injunction restraining the defendant from ever repeating the acts complained of;*
 - e. *General damages;*
 - f. *Cost of the suit.*
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1. By a defence dated 17th June 2012, the respondent pleaded as follows:-
 - a. *The appellant voluntarily terminated the tenancy relationship on the 30th October 2012 without any notice.*
 - b. *The appellant voluntarily surrendered to the respondent old sofa set, I old wall unit, I metal table, a locked tool box, an old bed and an old cabinet since the same had not cleared his water bills with the service provider.*
 - c. *The aforesaid goods were not being held in distress for rent as all rent due and payable had been paid.*

1. It was pleaded that the court lacked jurisdiction to issue a declaration and further stated that the suit was a duplication of Rent Restriction Tribunal case No.10 of 2012 involving the same parties.
2. Simultaneous with the pleadings the appellant took out notice of motion under **Order 40 Rules 1, 2, 3 and 4 of Civil Procedure Rules** under certificate of urgency for orders that:-

- a. *the application be certified urgent;*
- b. *a stay of execution and or sale of the detained goods pending hearing;*
- c. *distress notice and or notice of intention to sell issued by or on behalf of the respondent be set aside or quashed.*

1. The application was supported by the affidavit of the appellant wherein he deponed that he was the respondent's tenant at KARATINA MUNICIPALITY BLOCK 1/300 Karindundu area at a monthly rent of Kshs.6000/= including water and conservancy.
2. It was deponed that due to respondent's failure to pay for water and electricity, the services were disconnected forcing the appellant to vacate the premises on November 2011 but notwithstanding rent being fully paid, the respondent forcefully, illegally and without any colour of rights detained the appellant's house hold goods valued at Kshs.260,000/= and continue to detain the same forcing the appellant to lodge a complaint with Rent Restriction Department.
3. In reply to the application, the respondent through Kinyua Kiama & Co. Advocates filed a notice of preliminary objection to wit:-

- a. *there is no decree capable of being stayed;*
- b. *the court lacks jurisdiction in respect of the matters which is relating to Tenant and Landlord and therefore vested in Rent Restriction Tribunal and High Court;*
- c. *The court lacks jurisdiction to make a declaration.*

1. It was supported by the annexed affidavit of John Gikandi Magondu in which he agreed that the rent was Kshs.6000/= exclusive of water and electricity. It was further stated that the appellant's water metre was on or about 23rd October 2011 impounded by officers from Mawasco for none payment on 23rd October 2011. He received call that the appellant was vacating the premises and since he did not have water clearance certificate he insisted that he could not carry all the goods unless he furnished him with evidence of payment for which the appellant surrendered the said goods.
2. It was deponed further that goods were valued at no more than Kshs.20,000/= while the water bill outstanding was Kshs.29,637/=.
3. The preliminary objection was taken in respect of the jurisdiction of the court to try the matter and the court held that:-

1. **“As per the provision of paragraph 3 of the plaint, it is clear that there existed or exist a tenant landlord relationship between the plaintiff and defendant. Matter connected with the relationship between a landlord and tenant of a dwelling house are dealt with under the Rent Restriction Act Cap 296 Laws of Kenya.”**

2.

4. Being dissatisfied with the said ruling, the appellant filed this appeal and raised the following grounds of appeal:-

1. *The trial magistrate erred in law and in fact in holding that the Court does not have jurisdiction in the matter, in the absence of evidence and without a hearing;*
2. *The trial magistrate erred in law and in fact in failing to appreciate that the Rent Restriction Tribunal is a statutory tribunal whose jurisdiction is limited to cases of premises whose monthly rent does not exceed Kshs.2500/=, and that accordingly in all other cases including the instant suit jurisdiction lies in the ordinary civil courts mutatis mutandis, otherwise the appellant would be non suited thereby occasioning total miscarriage of justice;*
3. *The trial magistrate misdirected herself in the interpretation and application of the provisions of **Section 6 of Civil Procedure Act** on “stay of suit” generally;*
4. *The trial magistrate erred in law and in fact in her failure to correctly apply the provisions of **Sections 1A and 1B of Civil Procedure Act**;*

5. *The trial magistrate misdirected herself in law and in fact by striking out the suit while there was a lawful ground or reason for doing so and thereby occasioned miscarriage of justice.*

1. Submissions

2. On behalf of the appellant it was submitted that the tenancy was terminated on 30th October 2011 and therefore at the time of filing the plaint, the relationship between the landlord and tenant had been terminated. It was submitted that the suit was for unlawful detainer and for recovery of items valued at Kshs.260,000/= and therefore the Senior Resident Magistrate had jurisdiction. It was further submitted that as per **Section 2 (1) (c) of Rent Restriction Act**, the jurisdiction of the tribunal is limited to premises where monthly rent does not exceed 2500/=.

3. It was submitted that in striking the suit the magistrate acted in trial disregard of law and facts since **Section 2 (1) (c) of Cap 296** put the premises in question outside the jurisdiction of Rent Restriction Tribunal and that **Section 30** of the **Act** did not affect the jurisdiction of the court.

4. On behalf of the respondent, it was submitted that the tribunal case was set down for hearing on 30th April 2012 and therefore the same could only be terminated by consent of the parties or an order of the court upon an application by the claimant under the provision of **Order 25 Rule 2 of Civil Procedure Rules**. It was submitted that it was an abuse of the court process for the appellant to seek to prosecute parallel suits in two different forums.

5. It was further submitted that the cause of action arose out of a tenant Landlord relationship and therefore the appellant's argument that he was paying rent of Kshs.6000/= beyond the tribunal sum of Kshs.2500/= had no legal basis and that the act of the appellant filing the claim originally with the tribunal is a clear indication that he truly knew where his recourse lies.

6. From the pleadings, proceedings and submissions, there is only one issue for determination that is whether the trial court had jurisdiction to determine the issue in dispute or whether it was the Rent Restriction Tribunal which had jurisdiction.

7. It is not disputed from the pleadings that the appellant was paying a monthly rent of Kshs.6000/= . What is disputed is whether it was inclusive or exclusive of water and electricity.

8. **Section 2 (1) of Cap 296 Rent Restriction Act** provides as follows:-

a. *This Act shall apply to all dwelling houses, other than;*

b. *excepted dwelling houses;*

c. *dwelling houses not on service tenancies;*

d. *dwelling houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.*

1. It is therefore clear that the dispute herein was outside the jurisdiction of Rent Restriction Tribunal and whether or not the appellant had filed a claim at the Tribunal could not confirm jurisdiction upon the tribunal or take away the jurisdiction of the Senior Principal Magistrate to determine the matter since it was within its monetary jurisdiction.

2. In therefore declined jurisdiction the trial court misapplied the law and fell into error for which her ruling is liable to be set aside. I therefore allow the appeal herein and set aside the order of the trial magistrate in striking the appellant's suit herein and re-instate the same for hearing on merits before any other magistrate at the Senior Principal Magistrate's court at Karatina rather than Hon. Onkwani H.M. with costs of this appeal to the appellant.

Signed and dated this day of 2014

J. WAKIAGA

JUDGE.

Delivered by Justice J. Ngaah on behalf of Justice Wakiaga this 25th day of November 2014

J. NGAAH

JUDGE.

In the presence of:

----- for Appellant

----- for Respondent