



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 116 of 2002

STEPHEN RONOH.....APPELLANT

VERSUS

HARUN CHEBOI.....RESPONDENT

JUDGEMENT

The respondent was the Plaintiff in Rent Restriction Tribunal case number 12 of 2002. In his plaint, he averred that he was the landlord and owner of **plot No.12** in light Industry Olenguruone area (hereinafter referred to as the “**suit premises**”) and the appellant was his tenant at a monthly rent of kshs.2000/=. He claimed against the appellant a sum of kshs.32,000/= being arrears of rent.

The appellant filed a statement of defence and denied that the respondent was the landlord and owner of the suit premises and that he was a tenant therein at a monthly rent of Kshs.2000/= and further denied being in arrears of rent in the sum of Kshs.32,000/= or any other amount at all. He said that there was no relationship at all between him and the respondent. The appellant further stated that he was the registered owner of plot No.13 Olenguruone which is also known as L.R.No.12447/307 having been so registered on 24/8/2001. He denied ever having occupied the suit premises. He further stated that the Tribunal had no jurisdiction to deal with the matter.

During the hearing, the facts that seemed to be undisputed by both parties were that the respondent was allocated the suit premises, plot No.12 in 1988 and in 1992 he erected a house thereon and rented the same to the appellant at a monthly rent of Kshs.2000/=. In the year 2000 the appellant purchased plot number 13 which shares a common boundary with plot No.12 and he was issued with a Grant (title) for that plot under the Registration of Titles Act. There is a deed plan annexed to the said Grant which shows the dimensions, abutments and boundaries of the said plot. In January 2001, land surveyors went to the plot to re-establish the beacons and it was realised that the respondent’s house was standing on plot No.13 and thereafter the appellant refused to pay any more rent to the respondent since the house was on his parcel of land.

Although the respondent argued that later on other surveyors went to the site and redrew the boundaries of his plot such that his house fell within his plot, he did not produce any documents in proof thereof. The respondent also did not have a Grant in respect of plot No.12, he only relied on a letter of allotment which was given to him in 1988.

The respondent’s counsel, in his submissions before the Tribunal, stated that the house in question belonged to the respondent and the appellant could not deny the same, having admitted that he rented the

same from the respondent and paid rent for it from 1999 to January, 2001.

On the other hand, the appellant's counsel submitted that the appellant, being the registered owner of plot No. 13 on which the house stood, was in law the owner of the house. He said that the respondent ought to have ascertained his plot boundaries before he erected the house in question. Counsel further submitted that the Tribunal did not have jurisdiction to determine the dispute that was before it as it related to ownership of the house and not just the rent thereof.

In its judgment, the Tribunal acknowledged that it had no jurisdiction to determine the issue of the boundary as between the two plots. However, the learned chairman stated:

“The only issue that this court has the jurisdiction to decide is whether or not a landlord/tenant relationship with regard to specific premises exists between the parties and whether or not the terms and conditions of that relationship, express or otherwise have been breached. The landlord/tenant relationship does not hinge upon who owns the plot upon which

the suit premises stand. You can indeed own the house without the land as is the situation prevalent in the coast and the court takes judicial notice of locus.

The question then is not who owns the land but rather who is entitled to rent from the suit premises.”

The Tribunal held that the respondent was the rightful owner of the structure and was entitled to rent from the appellant and entered judgment for the respondent in the sum of Kshs.32,000/= as arrears of rent and mesne profits at the rate of Kshs.2000/= per month plus costs and interest.

Having carefully studied the proceedings that were before the Tribunal, it is apparent that the main dispute that existed between the appellant and the respondent was not just the issue of rent, that is whether the appellant was in arrears of rent or not but rather whether he was under any legal obligation to pay rent to the respondent. His argument was that he was not under such an obligation as he was the owner of the parcel of land on which the house in question was standing, having purchased the plot subsequent to the erection of the house. He produced a Grant and a Deep plan to prove his claim. To him, the legal maxim ***“quic quid planatur solo solo cedit”*** (i.e. whatever is attached to the soil becomes part of it) applied. It is also a legal principle that he who owns the land owns everything extending to the heavens and to the depth of the earth. The definition of “land” under the Registration of Title Act Cap 281 is also instructive.

While there was no dispute that the house in question was put up by the respondent and rented to the appellant, there was no proof that it was standings on plot No.12 owned by the respondent as per the letter of allotment that was produced before the Tribunal. The learned chairman of the Tribunal was right in stating that the Tribunal had jurisdiction to decide whether or not a landlord/tenant relationship existed between the parties. If the same did not exist, then the Tribunal lacked jurisdiction to determine the matter. In my view, the determination of that issue must of necessity involve determination of the question whether the house stands on plot No.12 or number 13. The mandate of the Rent Restriction Tribunal is clearly defined by sections 5 and 6 of the Rent Restriction Act Cap 296. The same does not include determination of property ownership. The Tribunal can only exercise such powers as given to it by the said Act, see **RENT RESTRICTION TRIBUNAL VS RAVAL EXPARTE MAYFAIR BAKERIES LIMITED [1985] KLR 167.**

With great respect, the chairman of the Tribunal acted without jurisdiction when she held that the respondent ***“is the rightful owner of the structure irregardless of where the defendant may for the time being believe it stands and he is the one who is entitled to rents from this premises.”*** The Tribunal, having held that it had no jurisdiction to determine the boundary dispute went on to make a finding which was analogous to determination of the very issue that it said it had no capacity to.

The analogy of the concept of ***“house without land”*** which the Tribunal alluded to in its judgment, with respect, could not apply in this case. The concept of a ***“house without land,”*** to the best of my

understanding is an arrangement that is prevalent at the Coast Province of Kenya whereby a landlord allows a person (whom I will refer to as a tenant) to put up a house on his land either for the tenant's own occupation or for rental and the tenant initially pays to the landlord a given amount of money at the commencement of that often loose arrangement and thereafter continues to pay some premium either monthly or annually. The "*tenancy*" may be for a fixed period of time or an indefinite one and quite often there is no written agreement between the parties but the landlord may signify his consent by signing the tenant's building plan and applications for water and electricity supply.

I believe that in the Rift Valley Province such a concept is unknown. It was not envisaged by the parties to the dispute at all. It was important to determine the issue of the boundary dispute once and for all and that could not have been done by the Tribunal. One of the parties herein must institute the appropriate proceedings.

I allow the appeal and set aside the judgment of the learned chairman of the Rent Restriction Tribunal. The appellant will have the costs of this appeal as well as the costs of the Tribunal matter.

DATED, SIGNED and DELIVERED at NAKURU this 31st day of March, 2006.

D. MUSINGA

JUDGE

31/3/2006

Judgment delivered in open court in the presence of Mr. Nyangweso holding brief for Mr. Karanja Mbugua for the appellant and Mr. Gathaia holding brief for Mr. Rodi for the respondent.

D. MUSINGA

JUDGE

31/3/2006