



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 89 OF 2001**

NGANGA KAMAU.....APPELLANT

VERSUS

PATRICE KIIRU.....RESPONDENT

JUDGMENT

The appellant in this appeal is the owner of the residential premises situated at Plot No. III Gilgil Township. The respondent was a tenant in the said premises paying rent of less than 2,500/=. The respondent was therefore a protected tenant. On the 23rd of January 2001 the respondent filed a claim before the Rent Restriction Tribunal seeking, *inter alia*, for the orders of the said tribunal to restrain the appellant from interfering with his quiet enjoyment of the tenancy at the suit premises. The respondent further prayed that he be paid compensation by the appellant for the three days that he had been locked out of the said premises and had been forced to seek alternative accommodation. He also prayed to be awarded costs of the reference. The appellant filed a defence and counterclaim. He denied that he had locked out the premises leased by the respondent. He averred that the respondent was a persistent rent defaulter and was therefore not entitled to the reliefs sought in his plaint. The appellant counterclaimed for the rent arrears of Kshs 6,500/=. He also sought to be issued with orders compelling the respondent to give vacant possession of the suit premises.

After hearing the evidence adduced by the appellant and the respondent, the Chairman of the Rent Restriction Tribunal found in favour of the respondent. She ruled that the landlord (*appellant*) had unilaterally increased the rent without the consent of the tribunal. She further restrained the appellant from increasing the rent of the said premises without reference to the tribunal. The appellant was ordered to pay compensation to the respondent the sum of Kshs 9,274/=. The appellant was further condemned to pay the costs of the reference before the tribunal. The appellant was aggrieved by the said decision of the tribunal and duly filed an appeal to this court.

In his memorandum of appeal, the appellant raised three grounds of appeal faulting the decision of the Learned Chairman of the Tribunal. The appellant was aggrieved that the Learned Chairman had relied on unsigned receipts and medical bills to award compensation to the respondent whereas the respondent had not proved any nexus between the said receipts and the complaint that he made concerning the appellant's conduct in respect of the said tenancy. The appellant was aggrieved that the Learned Chairman had found in favour of the respondent whereas the respondent had failed to prove his case on a balance of probabilities. The appellant faulted the tribunal for failing to allow the appellant's counterclaim for rent arrears and costs even after the respondent had admitted the fact.

At the hearing of the appeal, Mr Gitonga Learned Counsel for the appellant submitted that the appellant had properly served the respondent with a notice to increase rent. The respondent had not opposed the said increment. Learned Counsel submitted that the respondent did not deny that at the time the event that

he complained took place, he had failed to pay rent for three months. The respondent was thus three months in arrears in his rent. The appellant was aggrieved that the tribunal did not award him his counterclaim on rent arrears owing from the respondent. He submitted that this court ought to interfere with the decision of the tribunal and award him the prayers as sought in his counterclaim.

The appellant further submitted that the respondent had specifically filed the complaint before the tribunal instead of following the laid down mechanism for challenging the increase of rent because the respondent intended to frustrate appellant from enjoying a market rent for the said premises. Learned Counsel submitted that when the respondent filed reference to the tribunal, he refused to pay rent to the appellant. The appellant was of the view that the respondent had filed his case before the tribunal in bad faith. The appellant further challenged the special damages that were awarded to the respondent. He submitted that the respondent had not proved his case on a balance of probabilities.

Learned Counsel for the appellant further submitted that the appellant had increased the rent of the said premises due to the fact that he had installed electricity at the said premises. He took issue with the finding of the tribunal that he had unfairly increased the rent and further that he had increased the rent to cause annoyance to the respondent. The appellant reiterated that the respondent did not at anytime oppose the rent increment and therefore it was not open for him (*respondent*) to claim that the rent increment had been illegal. The appellant submitted that his right to enjoy the ownership of the suit premises should not be curtailed by an Act of Parliament which allowed the respondent to resist the increment of rent even when the said increment was legitimate. The appellant urged the court to allow the appeal with costs.

In response, the respondent (*who was acting in person*) submitted that the appeal filed by the appellant lacked merit. It was his view that the compensation awarded by the tribunal did not meet his expectations as it favoured the landlord (*appellant*). He submitted that the tribunal's judgment did not frustrate the appellant but rather properly found that the respondent had been unlawfully locked out of the rented premises with his family by the appellant. He submitted that the compensation was not excessive as he had had to seek accommodation with his family for three days when he was locked out of the suit premises. The respondent further submitted that the appellant did not follow the provisions of the **Rent Restriction Act (Cap 296)** when he sought to increase the rent of the said premises. He argued that the increment was therefore illegal. He submitted that even after the tribunal had given its ruling, the appellant, through the use of threats and co-ercion had managed to force the respondent to vacate the said premises.

He argued that the notices which was purported to have been issued by the appellant to him to vacate the premises was illegal as it did not conform to the law. The respondent further submitted that he did not fall into arrears as alleged by the appellant; rather when the dispute arose as to what amount was to be paid as rent, he deposited the undisputed amount with the tribunal. He submitted that the tribunal rightly found that the appellant had cause annoyance to him because he had locked the premises rented by the respondent thereby causing the respondent to spend three days out of the said premises. The respondent stated that he was only allowed back in the premises when he had obtained an order of the tribunal. The respondent urged this court not to interfere with the compensation award made to him. He urged the court to dismiss the appeal.

An appeal to the High Court from a decision of the tribunal is provided by **Section 8(2) of the Rent Restriction Act**. The said section provides that

“An appeal shall lie to the High Court from any such decision, determination or order in the following cases-

(a) in the case of an order under subsection (5) of Section 6 (relating to circumstances where a tribunal investigates a complaint and makes an order) (insertion mine); or

(b) on any point of law; or

(c) in the case of premises whereof the standard rent exceeds one thousand shillings, or any

point of mixed fact and law, and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact.”

The appellant’s appeal therefore fell within the ambit of this section. The issue for determination by this court on this appeal is whether or not the tribunal properly awarded compensation to the respondent after making a finding that the respondent had been locked out of the said suit premises. The other issue for determination is whether the tribunal properly considered all the evidence adduced and consequently dismissed the appellant’s counterclaim for the rent arrears and costs.

I have carefully considered the submission of the appellant and the respondent in this appeal. I have also re-evaluated the evidence that was adduced by the parties to this appeal. It is not disputed that the respondent was a tenant of the appellant. It is further not disputed that the respondent was a protected tenant within the meaning of the **Rent Restriction Act (Cap 296 Laws of Kenya)**. The rent paid by the respondent could not be increased, neither could his tenancy be terminated or varied without reference to the tribunal. The appellant argued before the tribunal and before this court that he was compelled to increase the rent of the said premises because of the additional expenses he had incurred when he had installed electricity in the said premises. He therefore increased the rent from Kshs 850/= to Kshs 1,500/=. It was his case that all the other tenants save for the respondent accepted the rent increment. He blames the respondent for taking him before the tribunal without any justifiable cause. He also submitted that the respondent had been a persistent defaulter in paying the rent due to the extent that the respondent had fallen into arrears for over three months.

On his part, the respondent countered the appellants argument by submitting that the rent increment by the appellant was not made in accordance with the law. He further argued that the appellant locked up the leased premises in order to force him to pay the illegal amount that he has increased as rent. He argued that the compensation which was awarded to him was justified in view of the blatant breach of the law by the appellant.

I have re-evaluated the evidence on record. It is my finding that the appellant increased the rent to be paid by the respondent without following the laid down procedure as provided by the **Rent Restriction Act**. Under **Section 5(1)(a)** of the said Act, the appellant was required to apply to the tribunal so that the standard rent payable could be assessed. The appellant did not do this, instead he rode roughshod on the tenants in his premises who had no option but to accept the said illegal rent increment. It is only the respondent who dared question the appellant’s action. The appellant was not amused by the position taken by the respondent. He made sure that the respondent’s stay at the said tenancy became unbearable. The appellant did not consider the fact that the respondent had referred the matter to the tribunal and deposited the undisputed rent at the tribunal. The appellant locked the premises occupied by the respondent three days. He only allowed access to the respondent after he had been compelled by the tribunal.

Having re-evaluated the evidence adduced and the submissions made, I find that the appellant sought to increase the rent in disregard of the existing law. He choose not to obey the edicts of the law. He did not want to consider that the respondent was a protected tenant. He harassed the respondent to the extent that the respondent was forced to move out of the said rented premises and seek accommodation elsewhere. The appellant took the said action complained of because he wanted to show the respondent that he could get him out of the premises whether or not the law allowed it. The law cannot condone the actions of the appellant. Where the law offers protection to a citizen (*in this case the respondent as a protected tenant*) it is the duty of the court to uphold such a law.

In the circumstances of this case, I am not prepared to find that the tribunal erred when it made the orders that it did including making an order that the appellant pays compensation to the respondent for unlawfully locking his premises. The counterclaim filed by the appellant was properly dismissed as lacking in merit.

In the premises therefore the appeal filed lacks merit. The same is dismissed with costs. The judgment of the tribunal is upheld.

It is so ordered.

DATED at NAKURU this 17th day of June 2005.

L. KIMARU

JUDGE