

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 78 OF 2001

PRASHANT SAMPANT.....APPELLANT/TENANT

=V E R S U S=

1.FATUMA ABGAO MOHAMED

2.UMI MOHAMED SHEIKH.....RESPONDENT/LANDLADY

J U D G M E N T

On 4/3/2000 the Plaintiffs (Respondents here) filed a Plaint in the Court of Senior Resident Magistrate at Kilifi.

On 30/3/2000 the Appellant filed an application in the Business Premises Tribunal Seeking leave to file reference out of time. The record shows that the Appellant filed an appearance and defence in Kilifi court. Thereafter the Respondent applied for summary judgment and although the issues of jurisdiction were raised and that an application had been made to file reference out of time, the Senior Resident Magistrate proceeded to enter summary judgment and granted vacant possession to the Respondent and ordered Appellant to vacate the premises within 30 days.

The Appellant now complains that:-

- (1) that Trial Magistrate erred in holding that there was no reference filed in the Tribunal despite the existence of application No.52/2003 pending before the Tribunal which on 12.4.2000 was by consent adjourned to the session following but that the Respondent proceeded to fix the summary application on 5/6/2000 before the Tribunal's session,
- (2) that the Trial Magistrate failed to appreciate the reasons causing the non filing of reference,
- (3) that the Trial Magistrate erred in ordering the Appellant to give vacant possession after expiration of 30 days of the order.

I have considered the submissions of both parties. I have also perused the Ruling of the Trial Magistrate. The Trial Magistrate made a finding that Statutory Notice had been served upon the Appellant and that no reference had been filed by the time the suit before him was filed. He came to the conclusion that the landlord was entitled to possession under the provisions of Section 10 of Cap.301. He observed that the filing of an application for extension of time to file a reference is not a reference. The Appellant does not seem to have pursued the said application and even at the hearing of this appeal no indication was given that the leave to file Reference out of time had been granted and indeed no reference had been filed.

In the circumstances, reference is made to the authorities cited in this case. The Trial Magistrate relied on the Civil Appeal No.28/1980 Court of Appeal decision in which similar issues on the effect of Section 10 of Cap.301 and non compliance with Section 6 thereof where the Court of Appeal said that where no reference was filed in time of operations of Section 10 of the Act terminates the relationship of Landlord and Tenant and the jurisdiction of the Business Tribunal is ousted. The landlord is therefore entitled to seek assistance of the ordinary civil court to recover the possession of his premises. The same view is held by the courts in Court of Appeal Civil Appeal No.267 of 1996, Kanabar & Others vs Fish and Mead Ltd and in the Mombasa HCC No.268/1997 Peter Nyaga vs Awadh Ahmed. I agree with the interpretation of the law by the Trial Magistrate and I do not see any error in his judgment.

I therefore dismiss this appeal with costs to the Respondent.

Dated at Mombasa this 10th day of March, 2004.

JOYCE KHAMINWA

J U D G E