

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Appeal 55 of 1994

MUSA IBRAHIM OSMAN APPELLANT

- V E R S U S -

LEILA KHAMIS SHIKELY.....RESPONDENT

JUDGEMENT ON APPEAL

This appeal arises out of case in the Rent Restriction Tribunal at Mombasa. (in respect of assessment of rent of residential premises). The record of appeal contains one page proceedings and the ruling of the tribunal. On 2.12.93 the Tribunal ordered the tenants to file their private valuation which was duly filed. On 14.4.94 the Tribunal delivered its ruling on the matter and stated :-

“The applicant Shikely is seeking an assessment of standard rent for the premises on plot no. XXXI/28 Old town. There is an assessment by the tribunal assessment officer Mr. Muchemi dated 30.11.93 who proposes rental value 4750/- per flat per month. The landlady relies on the assessment of Tribunal Assessment Officer. The tenants Musa Ibrahim Osman and Shabir T. Hibachi have a private valuation by M/s. Maina Cege & Co. who proposes rent of shs. 865. We note that according to the assessment report the premises were not let on 1.1.81. We therefore assess the rent by taking the average of the two valuations and assessment at shs. 2807 p.m. with effect from 1.6.94 exclusive of services”.

The appeal is against this ruling. Appellant states that the method adopted by the Tribunal was wrong. He relied on authority of Civil Appeal no. 8 of 1985 arising out of Business Premises Tribunal. The method of assessment was said to be wrong because under Section 9(2) (a) of the Act the rent should be determined on the basis of open market rent. In the tribunal case the tribunal had reached its conclusion stating:-

“We have carefully considered the two reports. We are of the view that both reports are too much tilted in favour of the parties. We have taken the difference between the two reports divided by two and then added the result to the rent recommended by tenant valuer. The approximate rent is Kshs. 5000/-. We assess new rent at Shs. 5000/- per month” .

This is what the judge (Bhandari) referred to as “**juggling with the figures**”. The accepted method was on basis of open market. On the other hand Mr. Khatib for respondent relied on the authority of Thakkar and another –vs- Jeram and others (1973) E.A. page 133. That case was dealing with residential premises under Rent Restriction Act Cap.296. In that case there was no evidence that the property was let on 1.1.65 so there was no standard rent set. In that case the court was of the view that the basis is the purchase price and costs and that the present yield and return on the capital. An examination of the tribunal officers report shows that he based the assessment on market value of land as at 1.1.81. That of the tenants was also based on market value of land as at 1981. This report reached the standard rent of 865/-. The tribunal has power to assess standard rent on the basis of the construction and the market value of the land. Where the tribunal is satisfied that the standard rent would yield an uneconomic return to the landlord because the fact it does not yield a fair capital return on the cost of construction and

market value of the land..... or that in the absence of any indication that the purchase price paid by the landlord was excessive, it does not yield a fair capital return on that purchase price ***“the tribunal may determine the standard rent to be such amount as in all circumstances it considers fit.”***

In this present case the landlord applied for assessment of standard rent on the ground that the rent then payable was shs. 1800/- and 2500/- p.m. respectively was **“on the low side and is uneconomical”** The applicant also said the premises were not let on 1.1.81 in affidavit supporting application. In the circumstances the tribunal was entitled to fix a fair standard rent taking the above into consideration. I, therefore, do not find that the tribunal applied wrong method in reaching to the standard rent as it did. The authority cited by counsel for appellant is in respect of business premises. It is to be noted that the tribunal gave both parties a chance to provide a valuation report.

In answer to the grounds of appeal set out by appellant I have come to the conclusion that there was evidence of landlord in her affidavit sworn that the premises were not let on 1.1.1981. There is no contradiction to this evidence. The tribunal is deemed to have made all inquiries as necessary when it sent the tribunal rent assessment office to the premises. Both reports were based on same principal, the fact that the tribunal took average of both reports does not make much difference. The landlords report proposed a much higher rent and there was no reason to disregard the same. As shown in the case cited by the respondent the tribunal has power to do what it can to determine fair rent to the landlord. In the circumstances I do not find that the tribunal failed to act within the law. The appeal is dismissed with costs to the respondent.

Dated this 15th day of October, 2004.

J. KHAMINWA

JUDGE