



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 87 OF 1997

SHARRIFFA ABDALLAAPPELLANT

VERSUS

MARY NYAMBURA & ANOTHER RESPONDENTS

JUDGEMENT

This is an appeal against the decision of the Chairman Rent Restriction Tribunal at Mombasa which he made on 5th December 1997 in Rent Restrictions Case No. 225 of 1993.

This Appeal was argued very forcefully by Mrs. Ali learned counsel for the appellant based on the grounds of appeal dated 5th December 1997 in which the appellant prays that the ruling made by Honourable Chairman on 5th December 1997 be set aside.

At the hearing of the appeal Miss Osino Counsel for the Respondent raised what could only be a preliminary point that while the appeal is directed against the ruling of the tribunal dated 5th December 1997 there in fact is not such ruling dated 5th December 1997.

There in fact is no such ruling dated on that date. She said:-

“There is no such order of tribunal made on 5 th December 1997. There was no o rder in the record of appeal made on 5 th December 1997”.

Mrs. Ali responded to this saying:-

“The ruling was made on 12 th August 1996 on same day certificate was issued so to say that prior to 20th January 1997 there was no certificate is not true. Ther e was a ruling made on 12 th August 1996 and Certificate issued same date”

The record of appeal filed herein has no order dated 5th December 1997 which is the order the appeal is based. Mrs. Ali’s response to Mrs. Osino’s objection does not clarify the matter under O.41 r/A of the Civil Procedure Rules appeals which should include such appeals from Tribunal’s decision is either against judgment decree or order. The memorandum of appeal ought to be accompanied by a copy of the certified decree or order appealed from and if not so filed to be filed within time given by court. Here no such leave was sought.

The grounds of appeal are all directed towards the decision/order/impugned. Where that decision is not exhibited or shown to exist the appeal cannot be competent.

From the foregoing it is my view that the decision appealed from not being shown as the one relied on to adopt any other decisions the one meant to be impugned would be injudicious and most reprehensible.

Appeal is therefore dismissed as incompetent.

Cost to the respondent.

Dated at Mombasa this 31st day May 2002.

A. I. HAYANGA

JUDGE

Read to Mr. Njoroge for Respondent.

Read to Mr. Mwakisha for Applicant.

A. I. HAYANGA

JUDGE
31/5/2002