



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL APPEAL NO. 42 OF 1999**

**MRS. BERTHA ALPHONSO ..... APPELLANT**

**VERSUS**

**PETER WAMBUA NGYEMA ..... RESPONDENT**

**JUDGEMENT**

The appellant together with another tenant had applied by Notice of Motion dated 9th February 1998 for the following orders.

- (a) That there be a stay of proceedings in RRT Case Nos. 43, 44 and 126 pending the hearing Determination of this application.
- (b) That the standard rent be re-assessed and increased on the grounds that it does not yield a fair capital return on the purchase price paid by the respondent/landlord.
- (c) That the Tribunal be pleased to order that the date from which the reviewed rent is/was payable be February 1995.
- (d) That the Tribunal do make any other necessary orders.
- (e) That costs be in the cause.

In its decision, the Tribunal re-assessed the rent and this gave rise to the appeal herein.

The application by Notice of Motion was brought under the provisions of section 3(a)(iii) and section 5(1)(a) of the Rent Restriction Act, Order 50 rule (1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The grounds of appeal as I understand them can be summarized as that the orders sought under the said application could not issue. I will consider each of the prayers therein separately.

The first prayer sought an order staying the proceedings in Tribunal cases No.43, 44 and 126 but the counsel at the time abandoned the same and although Mr. Suchack did submit on the alleged withdrawal of the said suit.I shall not dwell on the same. In any case it does not form part of the grounds of appeal.

The second prayer sought a re-assessment and increase of the standard rent on the ground that it didn't yield an economical return. This is the main gist of the appeal and Mr. Suchak submitted extensively on

the point. The first point was that the tribunal had no basis to entertain such an application as the standard rent had been assessed by it in RRT Case No.419/96 at the rate of Kshs.700/= on the 4.12.96. No appeal was preferred against the said assessment and instead the landlord attempted to increase it on his own which gave rise to two other cases RRT Nos. 43 and 44 by the tenants. Mr. Kenzi for the landlord however submitted that the Tribunal had the powers to re-assess the rent under the provisions of section 3(2)(b) of the Rent Restriction Act. The application was however brought under the provisions of section 3(a) iii which state:

“Standard Rent” means

**(a) In relation to an unfurnished dwelling house.**

**(iii) If on the 1st January, 1981, it was not let, or not erected, or the tribunal is unable to determine whether or not it was on that date let or erected, a rent to be assessed by the tribunal at a monthly rate of not less than one and one quarter and not more than one and one half per cent of the cost of construction and the market value of the land, the landlord paying all outgoings”**

This with respect does not have the same or similar meaning as provided for under section 3(2)(b) which Mr. Kenzi says entitled the tribunal to arrive at the conclusion it did. Section 3(2) (b) is only applicable in a situation where the tribunal is unable to obtain sufficient evidence to enable it assess the rent. That was not the case herein. Did the tribunal then have the power to re-assess the rent under the provisions of section 3(a)(iii)?

In its ruling the tribunal does acknowledge the submissions for the tenants that rent had been assessed at Kshs.700/=. It however does not go any further but in conclusion says no landlord in Ganjoni area would offer a single room for such amounts. Yet the issue of the rent having been assessed in RRT Case 419/96 at Kshs.700/= is not even disputed by the landlord.

It is therefore clear the assessment was sought based on the cost of construction and the market value of the land. The tribunal was aware of this and had ordered for an Assessment Officer’s Report and the tenant was also given a chance to prepare their own and in default the tribunal said at page 57 of record

**“In the event that the tenant does not file any private assessment then the case will proceed with the assessment on the file”.**

At the hearing the tenant did not produce any assessment Report. He however objected to the assessment as no enquiries as to actual cost of construction were made and report was based on estimates. The report by the Tribunal Assessment Officer is clearly based on the cost of construction and the same are estimates. At this point none of the parties had evoked the application of the provisions of section 3(2) (b) and Mr. Kenzi certainly realized that this was the correction section to have applied.

The tribunal clearly relied on the wrong assessment to arrive at the decision it did. I however agree that failure to cite the correct provisions of the law would not have rendered the application defective per se but in the light of the clear mistake in applying the wrong assessment this appeal succeeds.

I am satisfied the tribunal was in error in the said re-assessment of the standard rent by relying on an assessment report based on estimates on construction cost. The case should be remitted to the tribunal for reassessments based on the correct values. It is so ordered. The costs shall be to the tenant.

Dated this 12th day of July 2002.

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**