

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO.116 OF 1995

M.R.K. AMIRI APPELLANT

VERSUS

ABDULRADEN S.A. KADIRY RESPONDENT

RULING

The Rent Restriction Tribunal heard RRT 076/94 and made a determination. One party filed an Appeal being H.C. Civil Appeal No.116 of 1995. That Appeal was heard and the High Court directed that RRT No.076 of 1994 be heard afresh. That hearing has not proceeded. In the intervening period, the Landlord in RRT No.076 of 1994 transferred his leasehold interest to his brother, so that strictly in law, there is now a new Landlord. The tenant remains the same. The new Landlord has filed Rent Restriction Assessment No.20 of 2001. That is also before the Rent Restriction Tribunal. The Chairman for the same Tribunal has referred the whole matter to me for Directions.

In my humble opinion, as RRT 076 of 1994 is still alive, it is not up to the Tribunal to know whether the Landlord in that case has ceased to be landlord or not. These are matters of facts which will come up and will be finally known when the case comes up for hearing. It is then that the Landlord cited in that case will appear or not appear and give evidence to show he is no longer the landlord and or whether he is still interested in the case. If he is not interested in the case or does not appear on the hearing date then as he was the Plaintiff in that case, the case will be dismissed. If he is interested then he will produce evidence to prove his interest and the hearing will continue in the normal manner. In short, the court on its own cannot terminate the case as that may make the court be seen as a witness in a case before it. It cannot assume facts that are not before court in evidence. It must allow the parties to fix the case for hearing and let them do what they like with their case. Put another way the court must be moved into next action. If Landlord in that case does not take steps to fix down the case for hearing or if the tenant does not take steps to fix the case then the court knows what procedure to be taken after a period prescribed by law has elapsed.

As the RRT 076/94 was for termination of tenancy in respect of the same premises, it is only proper that that case be fixed for hearing first before the Assessment case because Assessment can only proceed if tenancy is not terminated.

I therefore direct that the RRT 076/94 be set down for hearing and let the parties proceed with it in one way or the other. Once it is out of the way Assessment case N0.20 Of 2001 should be heard. Directions accordingly.

No order as to costs.

Dated at Mombasa 26th Day of November 2002.

J.W. ONYANGO OTIENO

JUDGE