



REPUBLIC OF KENYA



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**Sindinga & 2 others v Mwangi (Environment and Land Appeal
E034 of 2023) [2024] KEELC 5530 (KLR) (15 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5530 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E034 OF 2023**

JA MOGENI, J

JULY 15, 2024

BETWEEN

RICHARD SINDINGA 1ST APPELLANT

ANDREW NYANDORO 2ND APPELLANT

WAMBUA MUTUA MBATHA 3RD APPELLANT

AND

MOSES MWANGI RESPONDENT

(Being an Appeal from the orders of Learned Chairperson Mr. Hillary Korir delivered on 2/10/2023 at the Nairobi Rent Restriction Tribunal in Case No. RRC/E1459/2023)

JUDGMENT

1. The Respondent is the tenant. The 1st Appellant is the landlord, the 2nd Appellant is an Agent and the 3rd Appellant is the caretaker. The Tenant/Respondent sued the Appellants in RRC No. E1459 of 2023 where he was the Plaintiff and the Appellants were the 1st – 3rd Defendants. He filed an application dated 28/09/2023 seeking for various orders inter alia that the tribunal grant an order compelling the defendants to reopen the suit premises and reinstate the tenant and allow him to enjoy the suit premises without interruption forthwith.
2. The Rent Restriction Tribunal by its Ruling dated 2/10/2023 certified the Respondent/Tenant's application dated 29/09/2023, filed on 29/09/2023 and heard on 2/10/2023 as urgent. The Defendants were ordered to re-open the suit premises and reinstate the tenant back into the suit premises forthwith, the Defendants/Appellants, their servants, employees and/or agents were restrained, upon reinstating the tenant back into the premises, from evicting, harassing him and/or in any other manner interfering with his tenancy pending the hearing of the application inter partes, the tenant was ordered to pay the outstanding arrears of Kshs. 10,000/- within 30 days and thereafter to



continue paying rent as usual, in default of which the defendants shall be granted leave to levy distress among other orders. These orders were granted ex-parte. From the proceedings of 2/10/2023, both the tenant and the defendants were absent. Prayers 1, 2, 3, 6 and 12 were granted and inter parties hearing was to be within 14 days.

3. The Appellants were aggrieved with the Rent Restriction Tribunal's finding hence this Appeal. In their Memorandum of Appeal dated 23/10/2023, the Appellants raised 9 grounds of appeal which I reproduce verbatim hereunder: -
 1. That the Learned Chairperson erred in law and fact in failing to find that it had no jurisdiction to entertain the case.
 2. That the Learned Chairperson erred in law and fact in failing to appreciate that the monthly rent is Kshs. 10,000/ which was way above the standard rent of Kshs. 2,500/.
 3. That the Learned Chairperson erred in law and fact by failing to ascertain the standard rent in order to establish if it was clothed with jurisdiction.
 4. That the Learned Chairperson erred in law and fact in entertaining a matter where the landlord tenant relationship no longer existed.
 5. That the Learned Chairperson erred in law and fact in failing to down the Rent Restriction Tribunal's tools after finding the monthly rent was Kshs.10,000/-.
 6. That the Learned Chairperson/erred in law and fact in believing the Tenant had an outstanding rent arrears of Kshs. 10,000/- without hearing the Defendants.
 7. That the Learned Chairperson erred in law and fact in reinstating the respondent back into the premises which is already occupied by an innocent third party without affording her the right to be heard.
 8. That the Learned Chairperson erred in law and fact in reinstating the respondent back into the premises without affording the Defendants the right to be heard.
 9. That the Learned Chairperson erred in law and fact in reinstating the respondent back into the premises without finding out if the premises had been occupied by another tenant.
4. The Appellants sought for the following prayers:
 - a. The Appeal be allowed.
 - b. The orders of the Learned Chairperson, Mr. Hillary Korir issued on the 2/10/2023 be set aside/vacated.
 - c. All proceedings in Nairobi Rent Restriction Tribunal in RRC/E1459/2023 - Moses Mwangi vs Richard Sindinga, Andrew Nyandoro & Wambua Mutua Mbatha be dismissed and/or struck out.
 - d. The Appellant be awarded the costs of this Appeal.
5. When the Appeal came up for hearing, the Court directed that the Appeal be disposed by way written submissions. The Appellants duly submitted and I have considered it. The Appellants filed their written submissions dated 18/01/2024 on the even date.
6. This being a first appeal to the High Court, it is an appeal on both facts and the law. The duty of the first appellate court which will guide me in the determination of this appeal is now well settled. It is to



re-examine and re-evaluate all the evidence and material placed before the trial court to draw its own independent conclusions regarding the validity or otherwise of the decision challenged on appeal. See: *Selle & Another V Associated Motor Boat Company Limited & Others*, [1968] EA 123; *Williamson Diamonds Limited V Brown*, [1970] EA 1.

7. I have considered the unopposed appeal, the record of appeal, the grounds of appeal and appellants' submissions for this appeal and cited cases. In the absence of any opposition, the only question which falls for determination in the appeal is whether the ex-parte appellants have established a proper case for the grant of the orders sought. Whether the Tribunal had jurisdiction to hear and determine the tribunal case and make orders complained of by the Appellants.
8. The tribunal is established under the *Rent Restriction Act*, Chapter 296 Laws of Kenya. The tribunal cannot exercise or assume powers outside those conferred by the Act. The jurisdiction of the Rent Restriction Tribunals established under Section 4 of the *Rent Restriction Act* is provided for under Section 2 (1) (c) of the Act which provides that the Act shall apply to all dwelling houses other than dwelling houses which have a standard rent exceeding Kshs. 2,500/= per month furnished or unfurnished.
9. First, the tribunals deal with tenancy disputes only when there are subsisting tenancy relationships. Where there is no subsisting tenancy relationship between the parties to the dispute, the tribunal has no jurisdiction. The proper fora where the dispute should be adjudicated, in such circumstances, are the civil courts established under *the Constitution*.
10. From the record of Appeal, the Tenant claimed to have been evicted from the suit premises on 4/08/2023 as he claimed to have been forcibly locked out of the suit premises and was denied access to the premises. On the other hand, the Appellants submitted that the Tribunal also lacks jurisdiction on the ground that the relationship between the Respondent and the 1st Appellant had lapsed. The Respondent averred that he was locked out from the house in August 2023. His items were removed from the suit premises on 26/09/2023 following the Chief's intervention. That upon removal of the said items, the house was let out to a new tenant. It is therefore clear that as at the time of filing the suit at the Tribunal, the landlord-tenant relationship had ceased. The Court is in agreement with the Appellants' submissions and it is my humble view that where there is no subsisting tenancy relationship between the parties to the dispute, the tribunal has no jurisdiction.
11. Secondly, when the standard rent in a tenancy relationship exceeds Kshs. 2,500 per month, the Tribunal has no jurisdiction. Our courts have time and again stated that whenever it emerges from the materials presented to the Tribunal that the agreed rent is more than Kshs. 2500 per month, the first business of the Tribunal is to assess the standard rent to establish whether or not it has jurisdiction to entertain the dispute. Our courts have stated that in such circumstances, the Tribunal should refrain from issuing injunctive orders in the dispute until it has ascertained that it has jurisdiction to entertain the dispute.
12. I have perused the pleadings that were filed by the parties at the tribunal and the tenant did not disclose the rent that was being paid for the suit property. It is also not clear whether the tenant adduce any tenancy agreement before the Tribunal. The tenant claimed that the landlord seized his items on 26/09/2023. He only admitted to owing Kshs. 10,000.00 in rent arrears as of August 2023. Even if that was true, it would mean that his monthly rent was therefore Kshs. 5,000.00 per month. This exceeds Kshs. 2,500.00. Furthermore, the Appellants have submitted that from the pleadings filed by the Respondent at the Tribunal, it was categorically clear that the monthly rent payable was Kshs. 10,000.00 which is beyond the stipulated standard amount of Kshs. 2,500.00 stipulated in the Act. That the tenant had rent arrears of Kshs. 30,000/= which is the equivalent of three months' rent.



13. It is the standard rent payable for the suit property that could give the tribunal jurisdiction to entertain the dispute or to reject the same. When the standard rent in a tenancy relationship exceeds Kshs. 2,500 per month, the Tribunal has no jurisdiction. It is settled that jurisdiction is everything and without it, a court or tribunal must lay down its tools. Jurisdiction cannot be assumed neither can it conferred by agreement.
14. From the record before me, it is evident that the agreed rent is more than Kshs. 2500 per month. A perusal of the order issued on 2/10/2023 demonstrates that the Tribunal failed to assess the standard rent to establish whether or not it has jurisdiction to entertain the dispute. The Tribunal is prohibited against entertaining a dispute between the parties unless the standard rent is first assessed and established to be within the limit of Kshs 2,500. In the case of *Desai v Warsama* [1967] E.A 351, it was held that no court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities.
15. There is no evidence to suggest that the Tribunal adhered to the above principles and procedures. The result is that this Court is satisfied that the Appellants have demonstrated that the Tribunal proceeded to adjudicate and issue ex parte orders in a dispute where, based on the materials before it, it had no jurisdiction to entertain the dispute. It is therefore my finding that the Appellants have established a proper case for grant of the orders sought in the Appeal. It is my further finding that the proceedings before the tribunal and its orders issued on 2/10/2023 were all nullities. This Court has power under Section 13 (7) (b) of the *Environment and Land Court Act*, 2011 to grant the prerogatory orders sought by the Appellants. Since the proceedings and the decision of the tribunal were nullities, the same are liable to review by this Court.
16. For the above reasons, I am satisfied that there is a basis for interfering with the Tribunal's discretion. Consequently, I find the appeal meritorious and therefore succeeds. I therefore set aside the ex-parte order of the Rent Restriction Tribunal and allow the appeal in terms of prayers a, b and c giving rise to a granting of the following orders: -
 - a. The Appeal is allowed.
 - b. The orders of the Learned Chairperson, Mr. Hillary Korir issued on the 2/10/2023 are hereby set aside and vacated.
 - c. All proceedings in Nairobi Rent Restriction Tribunal in RRC/E1459/2023 - Moses Mwangi vs Richard Sindinga, Andrew Nyandoro & Wambua Mutua Mbatha are hereby dismissed and struck out.
 - d. I make no order as to costs since the Respondent did not participate in this Appeal.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY 2024.

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MOGENI J

JUDGE

IN THE PRESENCE OF:

Ms Kimaru for the Appellant

Ms. Caroline Sagina Court Assistant



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**MOGENI J
JUDGE**

