



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 58 OF 2018

TOBIAS OYUGI.....APPLICANT/APPELLANT

VERSUS

ISMAIL NASSUR ALI.....RESPONDENT

[Being an Appeal against Ruling/Judgment delivered dated 5.6.2018 in Rent Restriction Tribunal Case No. 2 of 2018 before the Rent Restriction Tribunal at Kisumu]

JUDGMENT

The appeal before me arises from the decision made by the **RENT RESTRICTION TRIBUNAL**, Kisumu, on 5th June 2018.

1. By the said decision, the Tribunal granted judgment in favour of the Landlord, **ISMAIL NASSUR ALI**, for the sum of Kshs 120,000/=.
2. The Tribunal ordered the Tenant, **TOBIAS OYUGI**, to pay the decretal amount within 30 days.
3. The Tribunal further ordered that if the Tenant failed to pay the decretal amount within the 30 days, the Landlord could proceed to levy distress to recover the outstanding arrears, and the Landlord could also proceed to obtain vacant possession.
4. In his appeal, the Tenant accused the Tribunal of depriving him of his right to be heard before a decision could be made.
5. In answer to the appeal, the Landlord told this court that the Tenant had raised a Preliminary Objection to the case, and that the Landlord then produced the Title Deed for the property upon which the suit premises was situated.
6. According to the Tenant, although a Title document was made available, that could not constitute proof of ownership at the material time.
7. It was the Tenant's contention that because the Title document was dated 12th May 2017, whilst the proceedings before the Tribunal took place on 5th June 2018, ownership of the property could have changed.
8. In reality, it is possible that the suit property could have changed ownership during the one year between the date when the Title document was issued and the date when the proceedings took place.
9. However, until and unless the Tenant produced evidence to prove that there had been a change in the ownership of the suit property, I find and hold that the evidence embodied in the Title document constituted proof of ownership.
10. Of course, a current Certificate of Official Search could have been made available to the Tribunal. But the Landlord had no such obligation.
11. If anything, it is the Tenant who should have made available the Certificate of Official Search, if he wished to demonstrate that the ownership of the suit property had changed. I so hold because it is the Tenant's case which would fail if he did not adduce evidence to controvert the Title document which the Landlord had produced in court.
12. The Landlord submitted that the Tribunal had given the Tenant an opportunity to be heard.
13. However, when the Landlord was requested to point out where, in the record of the proceedings, the Tenant is shown to have been accorded a hearing, the Landlord conceded that the record did not contain anything to prove that the Tenant was given an opportunity to be heard.

14. I have carefully perused the record of the proceedings, and I did not find anything that would show that the Tenant was accorded an opportunity to put forward his case.
15. In the event, I find that the Tenant was not accorded a fair trial.
16. I feel obliged to add that the Tribunal needs to record its proceedings in such a manner as would clearly indicate which party was saying any particular thing.
17. The tribunal should not simply summarize what the respective parties had said.
18. The record should also indicate the evidence tendered by each witness, and such testimony should be recorded, as closely as possible, in the words uttered by each witness.
19. It is only after recording the testimony of each party and each witness, that the Tribunal would proceed to summarize the same, (if necessary), when making its determination.
20. The Plaintiff, who is the Respondent to the appeal is **ISMAIL NASSUR ALI**.
21. After the Plaintiff was served upon the Tenant, he raised a Preliminary Objection, asserting that the Plaintiff did not have the requisite locus standi to bring action against the Tenant.
22. In answer to that Preliminary Objection, the Plaintiff produced an Affidavit sworn by **TAWFIK ALI ALAMBO**, who deponed that he is the owner of the suit property, **L.R. NO. KISUMU/KORU/957**.
23. Tawfik Ali Alambo also deponed that the Plaintiff, **ISMAIL NASSUR ALI**, was his uncle, and that he had authorized the Plaintiff to be the **CARETAKER** of the suit property.
24. The Title Deed which was produced before the Tribunal showed that the owner of the suit property was **TAWFIK ALI ALAMBO**.
25. Meanwhile, in the Plaintiff's statement filed before the Tribunal, the Plaintiff described himself as the;

 “..... *landlord, owner and/or proprietor...*”

 of the suit property.
26. As the Title Deed shows that the Plaintiff was not the owner of the suit property, he could not have been the Landlord of the Appellant.
27. The Plaintiff was only the caretaker of the suit property. Therefore, he may have had the authority of Tawfik, to collect rents. However, pursuant to Title Deed before the Court, it is Tawfik Ali Alambo who remained the Landlord at all material times.
28. Based on the evidence adduced by the Plaintiff, the Tribunal ought to have upheld the Preliminary Objection.
29. In the result, the appeal has merits, and is therefore allowed. I set aside the judgment entered by the Tribunal, and substitute it with an order dismissing the Respondent's claim against the Appellant.
30. The Appellant is awarded the costs of the appeal as well as the costs of the suit before the Tribunal.

DATED, SIGNED and DELIVERED at KISUMU This 12th day of February 2019

FRED A. OCHIENG

JUDGE