



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL APPEAL NO. 34 OF 2017

PETER JOHN HAYWARD.....APPELLANT

VERSUS

SARAH WANGUI NDUNG’U.....RESPONDENT

(An Appeal from the Ruling and Orders of the Hon. Hillary Korir, delivered on 30th August, 2016

in the Rent Restriction Tribunal Mombasa in Rent Assessment Case No. 46 of 2015)

CORAM: Hon. Justice R. Nyakundi

Mr. Shujaa for the Appellant

Respondent in person

RULING

Procedural history

Mr. Peter Hayward was a tenant at Plot No. 687 Watamu-Kilifi owned by Sarah Wangui Ndungu. Pursuant to a tenancy agreement duly signed on 29.11.2013. One of the express terms in the contract was a rental contract commencing on 1.12.2013-31.11.2018. By the same tenancy agreement, John Hayward herein referred as the tenant and Sarah Ndungu hereinafter referred as the landlady agreed that the monthly rent payable is to be Kshs 25,000 inclusive of all charges except electricity and water costs. The tenant was to pay to the Landlady based on the private meter readings.

By an application dated 29.10.2015 the Landlady filed before the Rent Restriction Tribunal under Reference Cause No. 46 of 2016 for assessment of the standard rent of the premises. The Tribunal commissioned an assessment in response to the application by the Land Lady. The terms of reference for the assessment officer was to determine the rent he thinks was proper, having regard to the standard rent of comparable premises.

As a consequence of the referral to the Tribunal by way of an assessment report dated 11/12/2015, the standard rent was set at Kshs 60,000/- exclusive of water, electricity and other conservancy charges. The appellant John Hayward upon being served with the report raised a number of objections in his rejoinder dated 5.1.2016. One of the key features in his reply was the fact that the disputed property was not even owned by the respondent, Sarah Ndungu as evidenced by a search certificate attached.

It was also observed by the appellant that the suit property is located in a poor surrounding which lacks serenity and quiet enjoyment of the premises. As a consequence of the assessment report the tribunal fixed the rent payable for Plot No. 687 Watamu-Kilifi at Kshs 40,000/- in a Rent Control Certificate dated on 30th August 2016.

Being aggrieved with the decision of the chairman of the Rent Tribunal, the Appellant John Hayward lodged an appeal to this court, based on the following grounds:-

- 1. That the Tribunal erred in law and fact in failing to find that it had no jurisdiction to entertain the case.***
- 2. That the Tribunal erred in law and fact in failing to find that the premises was subject to a written lease agreement in which the agreed rent was Ksh.25,000/= per month until 31st May 2019 and that any unilateral change of the terms of the lease would***

constitute a breach of the written contract.

3. That Tribunal erred in law and fact in failing to find that the report on the rent assessment of the premises contained glaring errors in respect of the condition of the premises, and that its conclusion was based entirely on assumptions and suppositions and not evidence.

4. That the Tribunal erred in law and fact in failing to have regard of the standard rent of comparable houses in the area in which the leased premises is situated.

5. That the Tribunal erred in law and fact in failing to determine that the tenancy was a joint tenancy and that the joint tenant had not been joined in the proceedings thereby condemning the joint tenant or denying her the right to be heard.

6. The Tribunal erred in law and fact in failing to find that the respondent would not have been entitled to obtain possession of the leased premises until 31st May 2019 in which event no rent increase could at law be effected or was authorized.

In the support of the appeal the appellant counsel filed written submissions whereas the respondent filed a replying affidavit to challenge the entire appeal.

The issues for Determination

The substance of the appellant's appeal was that there was lack of jurisdiction on the part of the tribunal with regard to the assessment of Rent. The appellant submitted that the decision of the tribunal illustrated a blatant disregard of the provisions governing Landlord/tenancy relationship outside the framework of the Act.

The Law, Analysis and Resolution

The provisions relating to jurisdiction of the Rent Restriction Tribunal appear under Section 2 of the Act. However, Section 6 of the Act provides for assessment of Standard Rent. The definition of the standard is also intended for all those claims whose rentable property do not exceed the standard rent of Kshs. 2,500/-.

For the purpose of this Act, actions brought are deemed to be related and so closely connected in the first instance with those under the clause on controlled tenancy.

That is to say that the Tribunal was a forum created to hear and determine claims under controlled tenancy and the claim does not exceed Kshs.2,500/-. For the interest of the parties and the end of justice to be met the proceedings were commenced by way of a reference for an assessment of the rent payable in the suit premises occupied by the appellant.

By an order of the chairman he held that the rent payable for the premises was Kshs.40,000/- notwithstanding the assessment report which valued the appropriate rent at Kshs.60,000/-

In principle on whether the tribunal was guided by the assessment report or exercised discretion to vary the valuation to discount the rent from Kshs.60,000/- to Kshs.40,000/- it is not clear from the record.

According to Article 10 of the Constitution, the Tribunal was under a duty to give reasons for the decision. Similarly, Section 4 of the Fair Administrative Act 2015 provides for the duty to give reasons by the Judicial officer or Quasi-Judicial body. Section 2 of the Act barred claims pertaining to uncontrolled tenancy to be filed before the Tribunal. The land mark cases on jurisdiction is that of **owners of the motor vessels. Lillian S –vs- Caltex Ltd (Kenya 1989) KLR 1** where the Court held inter alia that:

“Jurisdiction is everything, without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

It was argued before this court that the Tribunal acted contrary to the provisions set out in Section 2 and 6 of the Rent Restriction Act in declaring that it had jurisdiction to carry out an assessment of rent on the suit property.

Before giving any such orders on rent chargeable, the purported assessment ought to have satisfied that the Tribunal in undertaking the assessment it had the jurisdiction under the Act. As noted by the Court of Appeal in **Adero & Another –vs- Uhuru Sacco Society No. 2002 KLR 577**. The law on jurisdiction flows from the Constitution as enabled in the various statutes that: -

“The jurisdiction either exists or does not ab initio and the non- constitution of the forum created by statute to adjudicate on special disputes could not on itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction. Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even an appeal where a cause is filed without jurisdiction, there is no power on that court to transfer to a court of competent jurisdiction.”

From the above authorities, jurisdiction is vital in the context of dispute resolution because of its interconnectivity with subject matter or cause of action. The court's power to exercise power over the claim and provisions within its geographical borders.

The **Australian Legal Dictionary Sydney Nygl PE Butt, 1997**, contextualized the doctrine of jurisdiction to resolve disputes to involve the following:

“The scope of the court’s power to examine and determine the act, interpret and apply laws, make orders and declare Judgments. Geographical area, the type of parties who appear, the type of relief that can be sought and the suit to be decided may limit jurisdiction.”

In the instant appeal, the respondent initiated proceedings in Rent Restriction Tribunal Mombasa against the appellant. The Respondent alleged that the property leased to the appellant currently being rented at Kshs 25,000/- should be reassessed largely to assist her enhance the rates for the property.

In exercising its jurisdiction, the Tribunal relied on the provisions of Section 3, (2) (1) (iv) of the Rent Restriction Act. Whilst the Respondent was keen to have the suit property assessed by a valuer from the tribunal, unfortunately her relationship with the appellant was governed by the tenancy agreement. Different rules and regulations apply to uncontrolled tenancy like the one entered into between the appellant and respondent in matters of disputed premises.

The tribunal even on its widest interpretation of the statute cannot exercise jurisdiction on uncontrolled leased properties. Personal jurisdiction can only be exercised directly in proportionate with subject matter jurisdiction.

Without discerning the merits of the appeal, it is clear from the foregoing that the tribunal’s penultimate ruling interpreting Section 3 of the Act was functionally exercised without jurisdiction. As the tribunal lacked subject matter jurisdiction it ought not to have entertained the action. Accordingly, the appeal is allowed. The proceedings before the Rent Restriction Tribunal quashed with costs to the Appellant.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 17TH DAY OF JULY, 2019

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R. NYAKUNDI

JUDGE