REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 96 OF 2018

BILLY EGADWA.....APPELLANT

VERSUS

MONICA AKINYI WANDIKA.....RESPONDENT

(An appeal arising from the decision of the Chairman, Rent Restriction Tribunal, in Kakamega Rent Restriction Case No. 115 of 2016)

JUDGMENT

1. The respondent herein brought the proceedings at the Rent Restriction Tribunal against the appellant with respect to a tenancy dispute revolving around rent. The appellant was said to be a tenant of the respondent for a long time paying rent at the rate of Kshs.4, 000.00 monthly. The dispute was that he had fallen in arrears of Kshs.272, 000.00 as at August 2016 and Kshs.202, 000.00 as at the time of the filing of the suit, and the Rent Restriction Tribunal proceedings were initiated to recover the same.

2. The appellant denied the tenancy and advanced the case that he had purchased the property in question, and, therefore, asserting that he was not in occupation as a tenant by of right as an owner. He averred that any monies received from him by the respondent were towards purchase of the subject property. He filed a notice of preliminary objection on grounds of jurisdiction,

3. The original record of the proceedings before the Rent Restriction Tribunal was not placed before me. The typed record of appeal is not very useful. From the record of appeal it would appear that the matter proceeded on 3rd March 2017, a date that had been fixed *ex parte* on 29th November 2016. It is not clear from the record whether the appellant was served with a hearing notice for 3rd March 2017.The proceedings were shabbily and scantly recorded. The Coram indicates that the respondent was present but the appellant absent. In the column where it is indicated that Mr. Elung'ata, advocate, appeared for the respondent also states that the appellant was in person. From this it cannot be deduced whether or not the appellant was present. It would appear that what was being argued then was the preliminary objection. The appellant made a statement and there was a response by a person who is not indicated on the record. A ruling on the preliminary objection was the delivered on 6th March 2016, in the absence of both parties. It is curious that the ruling was delivered on that date given that the hearing was on 3rd March 2017. The preliminary objection, where some purported evidence of ownership had been admitted, was dismissed. I find it curious that the appellant was ordered to pay the arrears of rent, and at the same time it was directed order that the matter proceeds to full trial at the next session.

4. The matter was then fixed for hearing on 12th June 2017. At that session the advocate on record for the appellant, Mrs. Chunge was represented by Mr. Munyendo who sought adjournment on grounds that Mrs. Chunge was held up elsewhere. That application was opposed. No ruling on the adjournment application was given, and the parties were not heard, despite the appellant being present personally, instead the Rent Restriction Tribunal directed that the respondent had leave to levy distress to recover outstanding arrears and to obtain vacant possession.

5. It is the events of 12th June 2017 that triggered the appeal herein. In the memorandum of appeal dated 13th June 2017, the appellant lists four grounds:

(a) That the Rent Restriction Tribunal only relied on the respondent's submissions;

(b) That the Rent Restriction Tribunal failed to accord the adjournment to the appellant when his advocate was engaged in another matter which had been fixed for hearing prior;

(c) That the Rent Restriction Rent Restriction Tribunal failed to consider the written evidence of the appellant which established that he was a purchaser of the property; and

(d) That the Rent Restriction Tribunal failed to apply the relevant and pertinent judicial principles and precedents regarding the handling of cases on tenancies and land ownership.

6. The appeal was canvassed by way of written submissions. Both sides did file submissions. I have read through the same and noted the arguments made therein.

7. Before I venture to consider the appeal on its merits, I feel I should address an issue that was not raised by the parties, but it goes to the heart of the matter. It was said in *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] eKLR, by Nyarangi JA, that jurisdiction is everything, and that without it the court could do nothing. The exact words of the Judge of Appeal were:

> *"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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."*

8. Did the Rent Restriction Tribunal have jurisdiction to entertain the dispute the subject of the instant appeal? The Rent Restriction Tribunal is a creature of the Rent Restriction Act, Cap 296, Laws of Kenya, at section 4, and it exercises jurisdiction within the parameters that are set out in that Act. The scope of the Act is set out in section 2 thereof, which provides as follows:

> *"2. Application*
>
> *(1) This Act shall apply to all dwelling-houses, other than –*
>
> *(a) …*
>
> *(b) …*
>
> *(c) Dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished."*

9. The jurisdiction exercisable by the Rent Restriction Tribunal is subject to the application of the Rent Restriction Act as set out in section 2, to dwelling-houses whose standard rent does not exceed Kshs.2, 500.00 per month regardless of whether the premises are furnished or not.

10. The foundation of the suit before the Rent Restriction Tribunal was the plaint dated 10th October 2016, which was lodged in that cause on 11th October 2016. It was a suit to recover outstanding rent and as the date of filing suit the figure was put at Kshs.202, 000.00. The rent payable per month was stated at paragraph 4 to be Kshs.4, 000.00. This is how paragraph 4 is phrased:

"THE Defendant has been a long time tenant on the Plaintiffs above mentioned house paying a monthly rent of Kshs.4, 000/= per month."

11. That fact is repeated in the plaintiff's witness statement dated 10th October 2016, where at paragraph two it says:

"I am a widow to PAUL SATIA WANDIKA deceased who was the owner of residential plot Number 142, Amalemba Estate, Phase III, paying an agreed monthly rent of ksh. 4, 000/= per month and later increased to ksh. 10, 000/= per month starting January 2016."

12. There can be no doubt at all that the arrears of rent that the respondent sought to recover in the primary suit had been accumulated at a time when the monthly rental was fixed at Kshs.4, 000.00 and later revised to Kshs.10, 000.00. When section 2 of the Rent Restriction Act is applied to those facts, it would mean that the rents were way above the limitation in that provision of Kshs.2, 500.00. The effect of it is that the dispute was outside the jurisdiction conferred on the tribunal. By entertaining the matter the Rent Restriction Tribunal was exercising jurisdiction that it did not have, or was acting beyond the scope of its jurisdiction. That is the very issue that the Rent Restriction Tribunal should have first addressed its mind before it began to address the matter on its merits. It had no jurisdiction over the dispute, it was acting in abuse of power and the proceedings were a complete waste of time. On that score alone the appeal herein ought to be allowed.

13. As there are grounds of appeal before me, let me consider them, without prejudice to what I have just stated above.

14. Grounds 1 and 2 can be handled together. They centre around the Rent Restriction Tribunal depending largely on the submissions of the respondent while having little or no consideration for the case presented by the appellant. I would agree with the appellant that the Rent Restriction Tribunal did not give him a chance to present his case. The appeal is against the determination made on 12th June 2017. This is what is captured in the record as having transpired on that day:

> *"12/6/2017*
>
> *CORUM: Hillary K. Korir - Chairman*
>
> *Court Clerk - Christine*
>
> *Plaintiff/Landlord*
>
> *Defendant/Tenant*

Mr. Elung'ata for the Plaintiff/Landlord

The Defendant is represented by Mrs. Chunge

Later:

Mr. Munyendo h/b for Mrs. Chunge for the Tenant

M/S Elung'ata for the Landlord.

Mrs. Chunge is held up in Bungoma High Court and may not make it to day.

I oppose the application as the Defendant has not paid as ordered. We therefore pray for payment and vacant possession.

COURT

The Plaintiff/Landlord is granted leave to levy distress in order to recover the outstanding arears and obtain vacant possession."

15. The suit was coming up for hearing on 12th June 2017. An application was made for adjournment on account of the non-availability of the advocate for the appellant. The adjournment application was opposed presumably by the advocate for the respondent, who urged the Rent Restriction Tribunal to reject it and order for payment and vacant possession. The Rent Restriction Tribunal then went ahead and granted the prayer based on that submission. The Rent Restriction Tribunal did not take time to address what had been raised first by Mr. Munyendo for Mrs. Chunge, adjournment. It did not rule on whether or not the adjournment was granted or rejected. That appears to have had been ignored altogether. It did not give Mr. Munyendo a chance to respond after Mr. Elung'ata had made his submission. It should be repeated that the matter was for the main hearing of the matter, the appellant was in court and so was an advocate holding brief for his advocate. The Rent Restriction Tribunal should have heard the matter fully since all the parties were before it. However, it proceeded in a summary manner that completed cut off the appellant. The Rent Restriction Tribunal appears to have had acted purely on the basis of the respondent's submissions as if the respondent was the only party before it

16. Ground 3 is about the Rent Restriction Tribunal not considering the documentary evidence by the appellant that he had bought the subject property. I do not think that there is foundation for this argument. The appeal challenges the decision that was made on 12th June 2017. At that hearing the appellant was not given a chance to present his case. There is nothing on record to show that he presented any documentary evidence on that day before the tribunal. Consequently, there were no documents before the Rent Restriction Tribunal to be considered on the matter the subject of Ground 3.

17. Ground 4 complains that the proceedings were conducted in a manner that paid no respect to the accepted tenets of judicial proceedings. Tribunals such as the one the subject of this appeal are quasi-judicial. They are bound to conduct proceedings in a more or less similar fashion with a court of law under the Judiciary. The principle of fair hearing applies. The tints of fair hearing include the opportunity to present evidence and to confront accusers through cross-examination. That process was not undertaken. There was no hearing. The appellant was completely ignored. Although the matter was coming up for hearing, he was not given a chance, whether personally or through the advocate who was present for him, to tell the Rent Restriction Tribunal what his case was.

18. The proceedings as conducted on 3rd March 2017 and 12th June 2017 were completely wanting of all rules of natural justice and fairness. In the first place the hearing that was conducted on 3rd March 2017 was meant to be limited to the preliminary objection on the limited point of jurisdiction. For preliminary objection, parties are not expected to offer any form of evidence, but in this case the Rent Restriction Tribunal entertained evidence, which meant that the objection that was being raised did not warrant being disposed of at that stage if the determination of the question was going to be dependent on evidence. Secondly, the Rent Restriction Tribunal made orders that had nothing to do with the preliminary objection, and in respect of which the parties had not had opportunity to submit. The order in question directed the appellant to pay the rent due. That issue was not before the Rent Restriction Tribunal that day, as it was not an aspect of the jurisdiction issue that was being addressed. The order effectively disposed of the suit since the entire suit was on the arrears of rent. Curiously, the Rent Restriction Tribunal still went ahead to direct that the main hearing be at the next session, even after it had disposed of the principal plank of the suit.

19. I need not say more. From the material before me, I am satisfied that the appeal before me is merited and I hereby allow the same. The appellant shall have the costs of the appeal.

DATED, SIGNED and DELIVERED at KAKAMEGA this 15th DAY OF November, 2019

W. MUSYOKA

JUDGE