REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 192 OF 1994

J.D. SUMARIA & 4 OTHERS .....APPELLANTS

VERSUS

VALBAI VAIJI & ANOTHER ..... DEFENDANT

JUDGMENT

The appeal before me is from a Ruling of the Rent Restriction Tribunal at Nairobi given on the 1st of July, 1994. The appellants are tenants in respect of premises on LR 209/10/8 section 43, 3rd Avenue Parklands within Nairobi area. The property has two block of flats:

i) A three storey block of six identical flats

ii) A single storey block of two identical flats

iii) Domestic staff quarters and domestic staff toilet block.

The flats were constructed in portion. Five flats were built in 1960; another in 1974, and two in 1978.

According to the advocate for the landlady/respondent, the parties had a dispute on the rent. They agreed by consent to have the properties assessed as to Standard Rent. The landlady filed an application for Standard Rent indicating in the further information required on the form the words "added improvements".

When the matter came up for hearing before the Rent Restriction Tribunal to review the uneconomical Rent that has been earned for the last 30 years by he landlady, both the parties submitted their valuation report to the tribunal which reviewed reviewed the said rents.

Indeed, in its ruling of the 1st of July, 1994, the Rent Restriction Tribunal reviewed the Standard Rent to Kshs.4,900/- and or Kshs.5,000/- respectively per flat exclusive of light and water charges. The rents were effective 1.8.94.

This meant that the suit premises were decontrolled.

The advocate for the respondent stated that the chairman of the Rent Restriction Tribunal had the powers to review the rents. He relied on Section 5(1) of the Rent Restriction Act.

This section states:

"The Tribunal shall have power to do all things which it is required or empowered or under the power of this act and in particular shall have powers.

a) To assess the Standard Rent of any premises either on the application of any persons interested or of its own motion.

b) To fix to the case of any premises, at its discretion and in accordance with the requirements of justice the date from which the standard Rent is payable,

c) .....

d) .....

e) .....

f) .....

g) .....

h) .....

i) .....

j) .....

k) .....

l) .....

m) .....

He also relied on section 11(1) that states: A landlord may, by notice in writing to the tenant a copy whereof shall be delivered to the tribunal increase the rent of any premises.

(a) .....

i) .....

ii) .....

(b) .....

(2) .....

(3) .....

(4) .....

It thus means that the landlady need not apply for the assessment of rent as the Rent Restriction Tribunal has the powers to do so by its own motion. The rents were uneconomical and as such the review of the rents were in order.

The advocate for the appellant stated that there was no dispute amongst the party. The case before the Rent Restriction Tribunal was for the assessment of Rent. The section 5(1) and 11(1) of the Rent Restriction Tribunal are enabling section and must be read with the sections already in the act.

The advocate stated that the principle to apply in assessing Standard Rent is that as set out in section 3 of the Rent Restriction Act That states:

“Section 3(1) “Standard Rent” means

(a) In relation to an unfurnished dwelling house;

(i) If on the 1st January 1981, it was let an unfurnished, the rent at which it was lawfully so let, the landlord paying all outgoing.

(ii) .....

(iii) .....

The landlady had in the application form stated that the rent as of 1.1.81 was kshs.1,5000/-., Ksh.2,000/- and Kshs.2,250/-, respectively. This also establishes the Standard Rent and as such there no need of assessment of rent as “the Standard Rent was already known. The Ruling of the Tribunal referring to the assessment of Rent “a review of Standard Rent” was in error. One has to first establish the standard Rent. A review cannot be done unless certain factors and evidence are before the court.

Further, parties cannot “by consent” agree on a standard Rent. Certain principles are established within the Rent Tribunal Act to which the advocate for the appellant stated it should be followed. He outlined these principles which is basically, once the Rents of 1.1.81 is known that is the Standard Rent.

The question thus arises can a party having known the rent of 1.1.81 came to court for assessment of Rent? Which of the two position should be followed?

I would agree with the advocate for the appellant that the correct position on establishing Standard Rent is as follows:

All the dwelling houses (which have not been exempted by he act) that has a rent (as of 1.1.81) payable of Kshs.2,500/- per month or below fall under the jurisdiction of the Rent Restriction Act. Such premises are controlled. One cannot increase the rents without the compliance of the rent Restriction Act.

It has been established that the act attaches to the premises, i.e. IN REM. This means that the rent chargeable to the premises remains the same regardless how many tenants go in and out of the premises.

Rents, In personum is where the rents would be attached to the person. This is where the rent of the premises may change if different persons occupy the premises. This is the situation that would apply to the Business Premises Rent Tribunal cases. It is thus clear that, in the case of the Rent Restriction Tribunal, the Rent payable remains with the premises. Whether a tenant comes into a premises and leaves or not, those rents are not permitted to be raised and remain the same.

The Standard Rent of a premises that is established for a dwelling house is that which was there on the 1st of January, 1981. Once this fact is known and established, there is no need to go for assessment of the Standard Rent. The Standard Rent being that which was established on the 1st of January, 1981. There are situations where the standard Rent as of 1.1.81 was not known because the premises were not let then. In such a case, the landlord would apply for the assessment of rent. The Rent Restriction Tribunal would then assess the Standard Rent.

There are situations where the building had not been constructed on the 1.1.81. The Rent Restriction Tribunal would assess the premises at a monthly rate of not less than 11/4% and not more than 1/2%of the cost of construction and the market value of land. The landlord paying the outgoings.

The other further situation is when the Standard Rent is known but the rents are uneconomical the Tribunal can reassess the Standard Rent. The fact though is to rely on this request, there must be Standard Rent first.

The landlord has to then show to the Rent Restriction Tribunal that the rents does not yield

"a fair capital return or the costs of return and market value of land as of 1.1.81."

The landlord has to prove the value of land, the rent he is getting is uneconomical and the capital return is poor.

I would therefore hold that if a premises was rented out on 1.1.81, the rent that it had on that date is the Standard Rent. One cannot go for assessment of the Standard Rent as the Rent is known.

Where there was no Rent charged as of 1.1.81 the Rent Restriction Tribunal can assess the Rent to establish what the Standard Rent should be.

Where the premises were constructed after 1.1.81 the assessment of the rent can be established as per section 3(1) iii of the Act.

I believe this is the correct position.

The Rent Restriction Tribunal in this case knew there was Standard Rent for the Premises. The landlady herself knew of this and actually supplied the Standard Rent then applied for assessment of the Standard Rent. The Rent Restriction Tribunal should have established that the Rents are as of 1.1.81.

The Rent Restriction Tribunal Chairman went and stated in its Ruling that they were reviewing the rents. This could not be so. I believe the intention of the parties was to deal with the issue of uneconomical rent. The advocate for the respondents submission was to this effect. If this was so, then the Standard Rent is as of 1.1.81 that was information supplied by the landlady, namely Kshs.1,500/-, Ksh2,000/-, and Kshs.2,250/- respectively.

The landlady must then satisfy the tribunal that the rents she is getting is uneconomical and the returns are not fair. The market value of land as of 1.1.81 must also be established.

(The appellants had abandoned grounds 2,5,6,7,8 and 10 of the appeal. They relied on grounds 1,3,4 & 9).

I find in this appeal that the Ruling of 1.7.94 by the Rent Restriction Tribunal was in error and established on the wrong principles.

I hereby set it aside and rule that the Standard Rents are 1,500/- p.m. 1974 (one flat) Ksh.2,000/- p.m. - 1960 flats (5 No.) Kshs.2,250 1978 per month (new block).

The appeal is hereby allowed with costs to the appellant.

Dated this 10th day of December, 1998 at Nairobi.

M.A. ANG'AWA

JUDGE