



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 195 OF 1980

PIARA SINGH CHEEMAAPPLICANT

VERSUS

C. RODRIGUES..... RESPONDENT

(In an appeal from the Rent Restriction Tribunal)

RULING

This is an application by way of notice of motion for review of an order on costs in this appeal from a decision of the Rent Restriction Tribunal which we gave on June 11, 1982. The first point made by Mr Khanna for the applicant was that he was unable to be present to argue the question of costs because he was held up in another court. We doubt whether this is a good reason for review. In any event we have now heard Mr Khanna's arguments. On the question of whether this court has jurisdiction to entertain an application for review in a matter of this nature Mr Khanna referred to section 80 of the Civil Procedure Act. He contended that under the section the court had unfettered powers of review. He sought support from a decision by Farrell J in *Sardar Mohamed v Charan Singh & another* [1959] EA 793. We do not think that case applies to the situation we are dealing with for the simple reason that the question therein arose from an appeal from a magistrate's court to the High Court and not from an appeal from a Tribunal to the High Court. Mr Khanna further maintained that the Civil Procedure Act and Rules had been super-imposed on the Rent Restriction Act and Rules. He referred to regulation 12 of the Regulations made under the Rent Restriction Act (cap 296), Laws of Kenya. He also sought support from the inherent powers of the court granted under section 3 A of the Civil Procedure Act.

Mr Pall for the respondent (original plaintiff/appellant) submitted that this court had no jurisdiction to entertain an application for review. His argument was that section 80 (b) of the Civil Procedure Act and order XLIV rule 1 (1) (b) conferred the right to review only such a decree or order from which no appeal is allowed by the Civil Procedure Act or the Civil Procedure Rules. Appeals to the High Court that were allowed under the Civil Procedure Act were only those mentioned in section 65 (1) of the Act, and therefore a right of review of a decision or order made in respect of an appeal was conferred on this court only in such appeals that were covered by this section. Appellate jurisdiction of the High Court over the decisions of the Rent Restriction Tribunal was conferred not by the Civil Procedure Act but by section 8 (2) of the Rent Restriction Act. As this right of appeal had not accrued from the Civil Procedure Act therefore this court did not have jurisdiction to entertain a review. We have carefully considered the arguments put forward by both the learned advocates and the authorities cited by them. In our view sections 80 of the Civil Procedure Act and section 8(2) & (4) of the Rent Restriction Act are very clear.

Section 8 (4) of the Rent Restriction Act has made the High Court as the final Court of Appeal in matters emanating by way of appeal from the Rent Tribunal. So section 80 (b) of the Civil Procedure Act is clearly the one on which this application is based. Section 80 (b) reads as follows:

“Any person who considers himself aggrieved

(a)

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

The important words are “... no appeal is allowed by this Act.” The use of these words has restricted the right of review to only those matters in which no further appeal is allowed by the Civil Procedure Act. Nowhere in the Civil Procedure Act is there any provision in respect of any appeal from the Rent Restriction Tribunal. Section 1 (2) of the Civil Procedure Act has confined the application of the Act to proceedings in the High Court and, subject to the Magistrate’s Courts Act, to proceedings in subordinate courts. The right of appeal from the Rent Restriction Tribunal to the High Court is given by the Rent Restriction Act. Section 8 (1) of the Rent Restriction Act states that no appeal shall lie from any decision of the Rent Tribunal except as provided by sub-section (2) of the section. Section 8(2) has granted a right of appeal to the High Court in certain cases only. And as has been pointed out earlier, section 8(4) of the Rent Restriction Act states that no appeal shall lie from the determination of an appeal given under sub-section (2) of the section- thereby making the High court as the final court of appeal. Nowhere is it provided either in section 8 or any other section of the Rent Restriction Act that the Civil Procedure Act or section 80 of this act or any other section of this Act shall apply to the proceedings before or emanating from the Rent Restriction Tribunal. This was an appeal from the Rent Restriction Tribunal and the right thereof had been derived from section 8(2) of the Rent Restriction Act. This right of appeal was not granted under the Civil Procedure Act. The provisions of section 80 of the Civil Procedure Act would not be applicable in relation to this appeal. We agree with Mr Pall that we have no jurisdiction to entertain this application for review because such jurisdiction has not been granted to the High Court by the Rent Restriction Act. Mr Khanna has referred to Regulation 12 of the Rent Restriction Regulations and also to the Rent Restriction (Appeals) Rules. Rule 12 has merely provided that subject to certain exceptions the procedure to be followed shall be that prescribed under the Civil Procedure Act, as far as is practicable. Rule 3 of the Rent Restriction (Appeal) Rules provides that the Civil Procedure Rules shall, *mutatis mutandis*, apply in respect of the procedure to be followed in an appeal under section 8(2) of the Act as they apply in respect of an appeal from a subordinate court to the High Court. These are mere matters of procedure. Jurisdiction is not the same thing as procedure. Procedural rules do not bestow jurisdiction. In this case, as Mr Pall very rightly pointed out, section 80 of the Civil Procedure Act had bestowed the jurisdiction to entertain an application for review while order XLIV of the Civil Procedure Rules has laid down the procedure and limitations for the exercise of the power granted by section 80. This application must fail because we have no jurisdiction to entertain an application of this nature. Lack of jurisdiction apart we also considered the application on its merits. We are satisfied that there is no substance in any of the grounds argued by Mr Khanna. Although we remitted the case for hearing by the Tribunal, basically the appellant succeeded in his appeal on the two principal grounds that he advanced and he is entitled to the cost of the appeal.

With regard to the third point ie section 14(1)(e), the fact remains that the appellant had succeeded on this point before the Tribunal. We held that the tribunal was wrong on this point and that is why we remitted the case for hearing by the Tribunal. The net result of the appeal was that the judgment of the Tribunal was set aside, and it was only set aside because of the appellant’s appeal which was basically successful. For these reasons, this application is dismissed with costs.

Dated and Delivered at Nairobi this 22nd day of July, 1982

E. COTRAN

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JUDGE

A.M. COCKAR

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JUDGE