



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

APPEAL NO. 5 OF 2016

GRACE NJERI KAMAU.....1ST APPELLANT

PENINA WANJIRU KAMAU.....2ND APPELLANT

VERSUS

GEORGE CHEGE NGANGA.....1ST RESPONDENT

CHARITY WANJUGU KAMAU.....2ND RESPONDENT

JUDGMENT

This is an appeal from the ruling of the Chairman, Business Premises Rent Tribunal, Mr. Mbichi Mboroki in Eldoret Tribunal Case No. 60 of 2015 delivered on 18.3.2016 in application dated 27.11.2015 seeking to set aside the orders of the Tribunal issued on 13.11.2015 and any subsequent orders. The genesis of this matter is an application to the Business Premises Rent Tribunal dated 27.11.2015 and filed on 30.11.2015, by Charity Wanjugu Kamau, the 2nd respondent herein who prayed that the ruling made on 13.11.2015 be set aside *ex debito justitiae* and all orders and proceedings subsequent thereto be vacated.

The application was based on grounds described in the affidavit that the tenant, 1st respondent made an application dated 15.10.2015 for the rent deposited with the Tribunal and further being deposited should be kept until conclusion of the Miscellaneous Succession Cause No. 118 of 2015 to benefit all beneficiaries of the Estate of the deceased Geoffrey Kamau Ng'ang'a.

When the application came up for hearing on 6.11.2015, the advocate for the 2nd respondent brought to the attention of the court an order of the High Court issued on 17.8.2015. The Tribunal directed that it would issue its ruling on the application on 13.11.2015 based on pleadings on record as of 6.11.2015. However, it is contended that on the 13.11.2015, the Tribunal issued its ruling considering matters outside the pleadings without offering the other parties an opportunity to be heard contrary to Article 50 of the Constitution.

The 2nd respondent argued before the Tribunal that her right to be heard was offended by the Tribunal and that her property was wrongly vested in the estate of her deceased husband. Upon hearing the application, the Tribunal found that the core issue for determination in the matter was to whom the tenant should pay rent. The Tribunal found that the suit property was not part of the Estate of the late Geoffrey Kamau Ng'ang'a.

The Tribunal therefore, set aside the orders made on 13.11.2015 whereby the tenant was to pay the rent to the Manager who had been appointed as per the order of the High Court issued in Nairobi High Court Misc. Case No. 118 of 2015 by Justice Musyoka. The rent deposited in the Tribunal was to be released to the Manager. In a nutshell, the Tribunal set aside the orders of 13.11.2015.

The appellant was aggrieved and came to this court on appeal on grounds that the Chairman of the Tribunal failed to consider all the material and evidence placed before him by the appellants by way of affidavits. It is contended that the Chairman of the Tribunal did not consider the ruling of the High Court delivered by Justice Musyoka in Nairobi High Court, Misc. Application No. 118 of 2015 on 6.11.2015.

The appellants pray that the ruling and order of the Business Premises Rent Tribunal, Eldoret BPRT Case No. 6 of 2015 be set aside in entirety and the orders issued by the Tribunal vide its Ruling of 13.11.2015 be reinstated.

The appellants through the firm of Mugambi Nguthari submit that the Tribunal went out of its way to depart from the orders made on 13.11.2015 and departed from the direction issued by the Judge.

The appellants further argue that the Chairman of the Business Premises Rent Tribunal failed to consider the fact that the disputed property was claimed to be property of the deceased and that the court made directions in respect to the property.

The respondents on their part argue that the Chairman, Business Premises Rent Tribunal did not err in setting aside the orders issued by himself on 13.11.2015 as there was a substantive application before him to set aside the orders.

Lastly, it is argued that the tenant went to the Tribunal seeking direction on whom to pay rent on ground that all the beneficiaries wanted rent from him and that this is what the Tribunal was to determine.

This court has considered the submissions of both counsel and does find that on 13.11.2015, the Tribunal found that the disputed plot belonged to the Estate of Geoffrey Kamau Ng'ang'a. The Tribunal considered the import of the orders given by Hon. Lady Justice Achode on 14.8.2015 and Hon. Justice Musyoka on 6.11.2015 and found that the decision of Justice Musyoka superseded the decision of Lady Justice Achode. The ruling the High Court judge was handed over to the Tribunal by Mr. Mugambi.

The Tribunal appeared to have heavily relied on the ruling by Justice Musyoka to make the orders that rent be paid to the Manager appointed by the High Court in High Court Misc. No. 118 of 2015. According to the Chairman, rent paid to Tribunal was to be released to the Manager.

This court finds that the decision by the chairman made on 13.11.2015 offended the considered principle in law that parties were to be given a fair hearing. When the ruling of Justice Musyoka was placed before the chairman by Mr. Mugambi, the chairman ought to have invited the other parties for submission and therefore, it is right to state that the copy of the ruling that was heavily relied upon by the chairman was sneaked in the application just before the ruling and therefore the interested party (Charity Wanjugu Kamau) who is the 2nd respondent on the appeal was not given a hearing.

When the 1st Interested Party in the case before Tribunal who is the 2nd respondent in the appeal herein went before the Tribunal for setting aside of the orders made on 13.11.2015, the chairman of the Tribunal made a finding that the issue before him was to whom should the tenant pay rent and that Mr. Mugambi conceded that the 1st Interested Party was the registered owner of the suit property and therefore set aside its orders of 13.11.2015 and ordered that rent be paid to 1st Interested Party Charity Wanjugu Kamau and that all rents deposited in the Tribunal be released to the 1st Interested Party who is the 2nd respondent in Appeal.

This court finds that the chairman of the Tribunal erred in failing to consider the decision of Hon. Justice Musyoka in Nairobi High Court, Misc. Application No. 118 of 2015 in making his ruling on 18.3.2016 because it was already on record. Had he considered the decision of the Hon. Judge, he could not have ordered the tenant to pay rent to the 1st Interested Party as the High Court had already made directions that the rent be paid to the manager of the estate of the deceased.

I do find that the appeal is merited and do allow the same and do set aside ruling dated 18.3.2016. I do order that the orders of the Tribunal dated 13.11.2015 be reinstated. Orders accordingly.

Dated and delivered at Eldoret this 22nd day of February, 2019.

A. OMBWAYO

JUDGE