



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL NO.60 OF 2018

(FORMERLY APPEAL CASE NO. 259 OF 2018)

ANNE LOKIDOR.....APPELLANT

VERSUS

NAIROBI CITY COUNTY.....RESPONDENT

JUDGEMENT

1. The Appellant lodged this appeal against the decision of the Honourable Chief Magistrate, Mr. P. N. Gesora on 5/6/2018 in which he found that the magistrates' court lacked the pecuniary jurisdiction to entertain the suit and therefore dismissed **Milimani CMCC No. 3971 of 2018**. The Appellant contends that the Hon. Chief Magistrate erred in law and fact by failing to appreciate that he had jurisdiction over the suit and that he made a ruling that was wrong in law and in principle. The Appellant faulted the Learned Magistrate for delivering a ruling in which he dismissed the Appellant's suit without hearing both the suit and the application on merit. The Appellant seeks an order to set aside, vary or review the order of the Learned Magistrate made on 5/6/2018.

2. In the plaint filed in **CMCCC No. 3971 of 2018** the Appellant pleaded that she was a tenant in the Respondent's premises known as Institutional House number 261 Lavington paying a monthly rent of Kshs. 35,000/= to the Respondent. The Respondent issued a notice to the Appellant on 16/4/2018 to vacate the suit premises on 30/4/2018. The Appellant, who was a County Executive Committee Member in the Nairobi City County from 2013 to 2017, contended that she had spent Kshs. 1,182,000/= on repairs and renovation of the suit premises. She claimed that she carried out the repairs on the suit premises with the knowledge and consent of the Respondent and that she applied to rent the suit premises when they fell vacant in January 2017. She sought a permanent injunction to restrain the Respondent from evicting her from the Suit property and in the alternative, sought reimbursement of the renovation and repair costs she had incurred from the Respondent.

3. The Respondent filed a notice of preliminary objection on 8/5/2018 on the grounds that the Chief Magistrate did not have the pecuniary jurisdiction to entertain the suit. The objection was argued on 8/5/2018. The Respondent contended that the learned magistrate lacked jurisdiction to deal with the suit premises whose value is Kshs. 150 million. The Appellants advocate countered that the cause of action was not ownership of the suit premises but rather that this was a dispute arising out of a tenancy agreement. In the ruling delivered on 5/6/2018, the Learned Magistrate found that by praying for a permanent injunction in the plaint, the Appellant was referring to the Suit property in its entirety. The Learned Magistrate found that the issue of the value of the suit premises was intertwined with the reliefs the Plaintiff sought. The Learned Magistrate went on to state that the orders sought would be effected on the suit property and was guided by the valuation report which gave the value of the suit property as Kshs. 150 million in 2014. The court found that the Appellant's alternative prayer in the plaint was ambiguous since no particulars of special damages had been pleaded. He found that although the Appellant had quoted the figure of Kshs. 1,182,000/= as the cost of the repairs, she had not set out the particulars of this figure. The Learned Magistrate found that the omission to link the amount quoted as the cost of repairs in the body of the plaint with the alternative prayer made the suit incurably defective and was a non-starter.

4. Parties filed submissions which the court has considered. The court notes from the submissions that the Appellant was evicted from the Suit property. She contends that that was unlawfully done. This appeal was transferred to the Environmental and Land Court on 8/11/2018. The High Court had issued an order on 2/7/2018 directing parties to maintain the *status quo* until the Appellant's application dated 8/6/2018 was heard. The Appellant claims that the Respondent confiscated her household items and transported them to an unknown location on 13/11/2018 leaving the Appellant and her children without such basic necessities as clothes, food and beddings.

5. The Appellant submitted that the Respondent should have waited until this appeal was heard and determined before evicting her from the suit premises. She urges this court to award her expenses amounting to Kshs. 1,182,000/= which she claims she incurred in renovating the house. The Appellant also sought general damages of Kshs. 1.5 million to mollify her after her eviction from the Suit property which she claims was unlawfully carried out. The Appellant also urged the court to award high punitive damages against the Respondent to deter the Respondent and other institutions from disobeying court orders in future.

6. In its submissions filed on 26/2/2019, the Respondent maintained that it is not liable to pay any special damages to the Appellant since these were not pleaded and quantified by the Appellant in her claim. It submitted that it is trite law that special damages must not only be

specifically pleaded but they must be proved. It contended that the Appellant had failed to prove the special damages and that the receipts she had produced did not have revenue stamps which therefore makes them inadmissible as evidence. It also claimed that the renovation expenses were exaggerated by the Appellant and further submitted that the Appellant was the author of her own misfortune for failing to vacate the suit premises voluntarily. The Respondent maintained that it did not unlawfully evict the Appellant.

7. The issue for determination is whether the court should issue the orders prayed for in the appeal. The Respondent contends that the suit property is an institutional house used by the Respondent's employees of which the Appellant was not.

8. The subject matter of the dispute was not the value of the Suit property, rather it was the Appellant's claim that she was entitled to remain in the suit premises as a tenant paying rent monthly having expended funds in renovating the house and not being in arrears of rent. The Business Premises Rent Tribunal (BPRT) deals with rent disputes in respect of leases over business premises without basing the claim on the value of the suit premises as the subject matter of the dispute. A tenant leasing a small part of a shopping mall whose market value is Kshs. 1 billion and paying a monthly rent of Kshs. 20,000/= can move the BPRT where it has jurisdiction to determine the dispute over rent increment by the landlord.

9. Having been evicted from the suit premises what was left for the court's determination in the suit before the Chief Magistrate was the alternative prayer for Kshs. 1,182,000/= being the expenses the Appellant claimed she incurred in renovating the suit premises. The Learned Magistrate had jurisdiction to determine whether the Appellant was entitled to the reliefs she sought in the plaint, that figure falling within the jurisdiction of the Chief Magistrate. The appeal is allowed, the decision of the Learned Magistrate made on 5/6/2018 is set aside. The suit will be heard by any other Magistrate other than the Chief Magistrate, Mr. P. N. Gesora. Each party will bear its costs of the appeal.

Dated and delivered at Nairobi this 8th day of April 2019

K.BOR

JUDGE

In the presence of:-

Mr. Evans Oruenjo for the Appellant

Ms. R. Mwendwa holding brief for Mr. Mwangi for the Respondent

Mr. V. Owuor- Court Assistant