



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC APPEAL NO 7 OF 2018

EDWARD MUNGATANA.....1ST APPELLANT

REAL APPRAISAL LIMITED.....2ND APPELLANT

VERSUS

PAMELA AKINYI KORADO.....RESPONDENT

(Being an appeal from the Judgement of the Chairman,

Rent Restriction Tribunal at Nairobi in Case No. 1498 of 2016)

JUDGEMENT

1. The Appellants were dissatisfied with the judgement delivered by the Honourable H.K. Korir, Chairman of the Rent Restriction Tribunal on 25/1/2018. In that case the Appellants who were the Defendants, had served the Respondent who was the Plaintiff, a notice to vacate the suit premises known as House G5-2 at Muthaiga North Pipeline Estate due to the expiry of their tenancy agreement and rent arrears.
2. The Respondent moved the Rent Restriction Tribunal (“the Tribunal”) seeking injunctive orders to restrain the Appellants from evicting, harassing or otherwise interfering with her tenancy. The Appellants filed a counterclaim urging the Tribunal to dismiss the Respondent’s claim with costs and grant them orders for recovery of rent arrears and recovery of possession of the premises.
3. The Tribunal, while being satisfied that the Appellants had demonstrated the need to re-occupy the premises personally, was not satisfied that the Appellants had proved their counterclaim as required by law. The Tribunal ordered the Respondent to deliver vacant possession of the premises within 30 days and for each party to bear its own costs.
4. In their Memorandum of appeal dated 23/2/2018, the Appellants have raised four grounds of appeal. They urge that the Chairman of the Tribunal erred in fact and in law in entertaining a matter over which he had no jurisdiction pursuant to Section 2 of the Rent Restriction Act; that the Chairman erred in law and in fact in failing to inform the Respondent that in view of her monthly rent of Kshs. 150,000.00, the Tribunal lacked jurisdiction to entertain the matter before it since its jurisdiction is over dwelling houses which have a standard rent of not more than Kshs. 2,500.00 per month; that the Chairman erred in fact and in law in making findings that were not supported by the evidence that was tendered before him; and that the Honourable Chairman erred in fact and in law in purporting to disentitle the landlord to rent arrears that were demonstrated to be owed.
5. The Appellants urged the court to set aside the Tribunal’s judgment and the consequential orders and for the costs of the appeal and of the proceedings in the Tribunal. The appeal was canvassed by way of written submissions.
6. The Appellants filed their written submissions dated 13/3/2019 in which they raised the issue of jurisdiction. They submitted that the appeal is brought pursuant to Section 8 of the Rent Restriction Act and relied on the case of **The Owners of the Motor Vessel Lillian ‘S’ v Caltex Kenya Limited (1989) KLR 1** where it was held that jurisdiction is everything and where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. Further, that a court of law should down its tools in a matter before it the moment it holds the opinion that it has no jurisdiction.
7. The Appellants also relied on **George Owino Mulanya & 4 others v Charles Achieng Odonga & Another Petition. No 264 of 2017, Nairobi** where Honourable Justice J. M. Mativo stated that jurisdiction was the very basis on which any tribunal or court tries a case and that a trial without jurisdiction was a nullity. The court further stated that the issue of jurisdiction can be raised at any stage of a case, be it at the trial, or on appeal and that the court can raise it *suo moto*.

8. The Appellants, in challenging the jurisdiction of the Rent Restriction Tribunal relied on Section 2 of the Rent Restriction Act and submitted that their tenancy agreement with the Respondent stated the rent payable as Kshs. 110,000/- per month for the first 6 months and then Kshs. 130,000/- for the remainder of the term. Moreover, that the Respondent had testified before the Tribunal that she had lived in the suit premises since April 2011 initially paying rent of Kshs. 85,000/= per month which had since been increased to Kshs. 150,000/= with effect from 1/1/2016, and that these amounts are far above the amounts over which the Tribunal had jurisdiction.

9. The Appellants relied on the case of **Republic v Chairman, Rent Restriction Tribunal & 2 others Ex-parte Agatha Njoki Mwangi, Nairobi JR Application No. 174 of 2014** where the subject matter of the suit premises was Kshs. 15,000/- and G.V Odunga J. held that where the standard rent exceeded two thousand five hundred shillings per month, furnished or unfurnished, the provisions of the Act are inapplicable in which case the Rent Restriction Tribunal has no jurisdiction to determine a dispute arising from such a tenancy.

10. The Appellant also relied on the case of **Republic v Deputy Chairman Rent Restriction & Another ex-parte Benedict Wambua Kenzi, Mombasa JR Application No. 49 of 2015** where the interested party was paying Kshs. 6000/- monthly rent and Honourable Justice M. J. Anyara Emukule found that the Rent Restriction Tribunal could not appropriate or arrogate itself jurisdiction where the standard rent was Kshs. 6000/- per month. On the issue of costs, the Appellants urged the Court to award them costs of the appeal pursuant to Section 27 of the Civil Procedure Act.

11. The Respondent attended court when the case came up for mention on 28/2/19 and the Court directed parties to file their respective submissions. The matter came up for highlighting of submissions on 9/4/19. The Appellants confirmed that they had filed their submissions. The Respondent's advocate undertook to file his submissions that same day and the Court set a judgment date. The Respondent did not file submissions.

12. The issue for determination is whether the Rent Restriction Tribunal had jurisdiction to hear the case as it did. Section 2 of the Rent Restriction Act cap 296 provides that the Act shall apply to all dwelling-houses, other than excepted dwelling-houses; dwelling-houses let on service tenancies; dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished. It is evident from the evidence tendered by both parties before the Tribunal that the monthly rent payable for the suit premises was Kshs. 150,000/= and the Tribunal therefore had no jurisdiction to deal with the dispute.

13. The Court allows the appeal and sets aside the orders of the Rent Restriction Tribunal. Had the Appellant raised the issue of jurisdiction before the Tribunal, parties would not have incurred much costs. Each party will therefore bear its costs of the appeal.

Dated, signed and delivered at Nairobi this 3rd day of June 2019.

K. BOR

JUDGE

In the presence of: -

Mr. V. Owuor– Court Assistant

No appearance for the Appellants and the Respondent