



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL APPEAL NO. 3 OF 2017

SARAH N SAKWA.....APPELLANT

VERSUS

ELIZABETH WAMWANYI t/a NAMUKHOSI LTD.....1ST RESPONDENT

NAIROBI HOMES.....2ND RESPONDENT

JUDGMENT

1. By a Complaint dated 11th January 2016, the Appellant filed a suit at the Rent Restriction Tribunal seeking to restrain the Respondents from evicting, harassing and/or interfering with the Appellants quiet occupation of the suit premises situate at Shanzu Mombasa County and for the Appellant to be allowed to deposit rent with the Tribunal if the Respondents decline to accept the same. It was the Appellant's case that she has been a Tenant of the 1st Respondent in the suit premises and occupying a one bedroom where she paid an agreed monthly rent of Kshs.15,000 exclusive of services. The Appellant stated that she paid all the rent including up to December 2015 to the 2nd Respondent who is the 1st Respondent's agent. The Appellant stated that the 2nd Respondent served her with a selective notice dated 17th November, 2015 to give vacant possession.

2. The 2nd Respondent filed defence dated 22nd August 2016 in which it denied that the notice was selective and stated that the Appellant had become a nuisance to other tenants who raised complaints and had threatened to vacate the premises unless the Appellant was given notice to vacate.

3. When the case came up for hearing on 30th August 2016 before Mr. Hillary K. Korir (Chairman), Mr. Dawson Marami and Mrs. Lona Lusina (members), the Tribunal in its judgment delivered on 6th December, 2016 granted the Appellant 30 days in which to look for alternative accommodation and deliver vacant possession subject to payment of rent up to then.

4. Being dissatisfied with the said judgment, the Appellant filed the present appeal before this court. In the Amended Memorandum of Appeal dated 28th February 2017 the Appellant has appealed against the judgment of the Rent Restriction Tribunal on the following grounds:

1. The Trial Chairman of the Tribunal erred in Law and fact in dismissing the Rent Restriction Tribunal Case Number 6 of 2016 on a balance of probabilities despite there being no sufficient evidence tendered by the Respondents therein.

2. The Trial Chairman erred in Law and Fact in dismissing the Rent Restriction Tribunal case Number 6 of 2016 against both the 1st and 2nd Respondents despite the 1st and 2nd Respondents not filing any appearance.

3. The Trial Chairman erred in Law and Fact in dismissing the Rent Tribunal Case Number 6 of 2016 despite the 1st Respondent not filing her defence nor reply to the Notice of Motion dated 9th January 2016.

4. The Trial Chairman erred in Law and fact in relying on statements by the 2nd Respondent and its witnesses even though there was no evidence to support their claims.

5. The Trial Chairman erred in Law and fact in disregarding the Appellant's statement simply because the Appellant did not provide witnesses.

6. The judgment issued by the learned Chairman was biased against the Appellant.

7. The learned Chairman erred in law in summarily dismissing the suit case through the judgment delivered on 6th of December 2016.

8. The learned Chairman erred in law and fact in failing to consider that the rent payable on the premises is Kshs.15,000/= and therefore beyond Tribunal's jurisdiction ceiling as per the provisions of the Rent Restriction Act (Cap 296) Laws of Kenya.

9. The learned Chairman erred in law in granting the Respondent an order for vacant possession of the subject premises despite the same not being pleaded nor prayed for by the 1st Respondent (the Landlord) and 2nd Respondent.

5. The Appeal was canvassed by way of written submissions which were duly filed by both parties. The Appellant submitted that the Tribunal failed to consider the case on the basis of the evidence on record, arguing that nuisance which was the ground for termination of the subject tenancy had not been proved. The Appellant further submitted that the Tribunal erred in ordering for vacant possession when there was no counter-claim seeking the same. The Appellant relied on the case of **Ignatius Makau Mutisya –v- Reuben Musyoki Muli (2015)eKLR** and **Electoral and Boundaries Commission & Another –v- Stephen Mutinda Mule & 3 Others (2014)eKLR**.

6. The Appellant further submitted that the Tribunal was not vested with jurisdiction to preside over the matter as the rent payable in the subject premises was kshs.15,000/=. The Appellant cited Section 2 (1)(c) of the Rent Restriction Act and relied on the case of **Republic –v- Chairman Rent Restriction Tribunal & Another Ex-Parte Ezekiel Machogu & 3 Others (2013)eKLR**. The Appellants submitted that the Tribunal lacked jurisdiction to determine the matter and therefore had no legal authority to make the orders which it did.

7. The Respondents submitted that the Appellant never applied for judgment as against the 1st Respondent and therefore cannot raise the issue now. The Respondents further submitted that Section 6 of the Rent Restriction Act vest in the Tribunal powers to deal with any complaint, whether by tenant or landlord, and make necessary orders. They submitted that the Tribunal acted within its jurisdiction and argued that a line must be drawn between standard rent and agreed rent. That standard rent is assessed by the Tribunal whereas agreed rent is a contract between the Landlord and the tenant. The Respondents submitted that in any even they should not be condemned to pay costs as the Appellant is the one who went to the Tribunal.

8. I have perused and considered the record of appeal, the supplementary record of Appeal, the grounds of Appeal and the submissions by the parties. This being a first appeal, I am conscious of the court's duty and obligation to evaluate, re-assess and re-analyze the evidence on record to determine whether the conclusions reached by the Tribunal were justified on the basis of the evidence presented and the law. The issues for determination in this appeal as I can deduce from the grounds of appeal are:

i. Whether the Tribunal had jurisdiction to deal with the matter.

ii. Whether the decision of the Tribunal was against the weight of the evidence.

9. The first issue for consideration is the jurisdiction of the Rent Restriction Tribunal and it is trite law that the tribunal is a creature of statute and has only such jurisdiction as has been specifically conferred upon it by statute. (See **Rent Restriction Tribunal –v – Rawal Ex Parte Mayfair Bakeries Limited (1985) KLR 167**). Section 2 of the Act states that its provisions extend to all dwelling houses, other than: -

a. Excepted dwelling – houses

b. Dwelling- house let on service tenancies

c. Dwelling – houses which have a standard rent exceeding two thousand five hundred shilling per month, furnished or unfurnished.

10. According to Section 3 of the Act, "Standard rent" as is relevant to these proceedings is defined as,

a. In relation to an unfurnished dwelling –house-

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

iii. If on the 1st January 1981, it was not let, or not erected, or the tribunal is unable to determine whether or not it was on that date let or erected, a rent to be assessed by the tribunal at a monthly rate not less than one one- quarter and not more than one and one- half percent of the cost of construction and the market value of the land, the landlord paying all outgoings.

11. It is clear that the jurisdiction of the tribunal is specifically defined and it relates to standard rent or assessment thereof which does not exceed Kshs.2,500/= per month. It is not in dispute that the rent for the suit premises was agreed and beyond the jurisdictional limit of the Tribunal. The Appellant pleaded and testified that she had been a tenant occupying a one bedroomed residential house in 1st Respondent's premises where she pays an agreed monthly rent of Kshs.15,000/= exclusive of services. Although Section 5 (1)(a) of the Act empowers the Tribunal to assess the standard rent either on application of any person interested or of its own motion, the case before it did not call for assessment of the standard rent as the rent was already agreed upon as between the landlord and the tenant. It is therefore my finding and so hold that the amount of rent and the fact that the same was agreed removed the subject premises from the definition of standard rent prescribed by the Act and therefore from the jurisdiction of the Tribunal.

12. As the Tribunal did not have jurisdiction to entertain the claim, the court allows the appeal and sets aside the orders of the Tribunal issued

on 6th December 2016 in Tribunal case No. 6 of 2016, and in lieu thereof an order is hereby made dismissing the Plaintiff's suit with costs. Had the Appellant not filed the case in the Tribunal in the first place, parties would not have incurred much costs. I therefore order that each party will bear its own costs of this appeal.

DATED, SIGNED and DELIVERED at MOMBASA this 31st day of July 2019.

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Obara for Respondents

Ms. Gitari holding brief for Hassan for Appellant

Esther Court Assistant

C.K. YANO

JUDGE