



REPUBLIC OF KENYA



KENYA LAW
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**Rashid v Gachura (Environment and Land Appeal E025 of 2023)
[2024] KEELC 388 (KLR) (29 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 388 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E025 OF 2023**

JA MOGENI, J

JANUARY 29, 2024

BETWEEN

ABDUL RASHID APPELLANT

AND

ESTHER N GACHURA RESPONDENT

JUDGMENT

1. By a Notice of Motion application dated 26/09/2023 the Appellant/Applicant appearing in person sought the following orders under urgency:
 1. Spent.
 2. That this Honourable Court be pleased to Order stay of execution of the judgment/decreed issued on the 31st August 2023 issued by Mr. Hillary Korir (Chairman) in the Rent Restriction Tribunal pending hearing and determination of this Application.
 3. That this Honorable Court be pleased to Order stay of execution of the Judgment/Decree issued on the 31st August 2023 issued by Mr. Hillary Korir (Chairman) in the Rent Restriction Tribunal pending hearing and determination of this Appeal.
 4. That the cost of the Application be borne by the Respondent.
2. The motion is supported by the Affidavit of Abdul Rashid with annexures thereto. I certified the application as urgent on 28/09/2023 and issued the following orders:
 1. “Spent
 2. That the application be served upon the Defendant/Respondent for an inter partes hearing within 3 days from the date hereof



3. That the Defendant/Respondent upon service shall file their respond to the application within 5 days from the date of service
4. That the interpartes hearing shall be on 09/10/2023”
3. The parties did not attend court on 9/10/2023 and I gave another date for mention on 31/10/2023 before then the appellant filed another Notice of Motion dated 11/10/2023 and was directed to serve the same within two days from 13/10/2023 and a fresh date for hearing the application was set for 18/10/2023. On the said date only the appellant appeared in court and having served and filed an affidavit of service dated 14/10/2023.
4. Satisfied that the application had been served the court granted the appellant/applicant the following prayer; “That this Honorable Court be pleased to Order Stay of Execution of the Judgment/ Decree issued on the 31st August 2023 by Mr. Hillary Korir (Chairman) in the Rent Restriction Tribunal pending the hearing and determination of this application”
5. The Applicant also filed a Memorandum of Appeal in this matter. The application and order were served on the Respondent on 26/10/2023.
6. The appellant’s Memorandum of Appeal dated 11/10/2023 listed the following as grounds of Appeal:
 - i. This Honorable Chairman did not take into account the plea of the applicant on the accessibility of schooling for his children.
 - ii. The applicant was owed over Kesh 100,000/- during the hearing at the Rent Tribunal but as of now he has complied with the advice of the Chairman of the Rent Tribunal and he has paid the whole amount save for a balance of Kesh 35,000/- whose payment by way of a post dated cheque is attached herein.
 - iii. The applicant is not able to get any other suitable premises in the vicinity at the same rent rate.
 - iv. There are no valid reasons given to elicit him to move
 - v. The applicant recently lost his father and is currently paying off debts caused by his sickness
 - vi. The applicant has stayed in rental house no. 13 for over 10 years and has been paying rent religiously save for last year when he lost his work and had an ailing father.
 - vii. The applicant has a fee balance at Moi Forces Academy of Kesh 52,770/- and therefore can not be burdened again with the costs of shifting a house.
7. The Appellant prays that the appeal be allowed, and that this court sets aside, gives a hearing date for issues before this court and any other relief as the court finds fit to give.
8. The Respondent filed Notice of Preliminary Objection dated 30/10/2023, and a Replying Affidavit 23/11/2023.
9. The Respondent’s Preliminary Objection raises two grounds as follows:
 1. The Appeal be struck out as the Appellant/Tenant has yet to exhaustively utilize legal remedies availed to him as per Section 8 of the Rent Restriction Tribunal 2010 that prudently provides for a review of any decision, order or determination of the tribunal.
 2. That the Application dated 26th September be struck out as the Appellant has not complied with the Rent Restriction (Appeals) Rules that state :- an Appeal brought under section 8(2) to the Act shall be filed within 15 days from the date of the decision, determination or order .



10. The Respondent contended that the appeal was defective since the appellant had not exhausted the legal remedies availed to him under Section 8 of the Rent Restriction Tribunal. Specifically, that Section 8(2) of the Rent Restriction Tribunal provides that an appeal should be filed within 15 days upon making of the decision by the Tribunal yet the appellant did not comply with this provision. In the circumstances the respondent prays that the appeal should be struck out.
11. In a response to the preliminary objection, the appellant filed his submissions dated 21/12/2023 and argued that the delay in filing the appeal was due to the fact that he is representing himself and that the delay of less than one month was not very inordinate. The decision of the tribunal was made on 31/08/2023 and the appeal was filed on 26/09/2023. This was not too long a time.
12. He relied on the cases of Mukisa Biscuit Manufacturing Company Limited versus West end Distributors Limited (1969) EA 696; Transcend Media Group Limited v Independent Electoral & Boundaries Commission (IEBC) [2015] eKLR and Nation Media Group Limited vs Attorney General [2007] 1EA. The appellant made a case for the court to not pay due attention to technicalities but uphold the provisions of Articles 159 (2) and Article 50 on the right of every person to be heard.
13. The respondent also filed their submissions dated 23/11/2023 and reiterated the contents in the replying affidavit stating that the Appeal should be struck out as the appellant/tenant has yet to exhaustively utilize the legal remedies provided under section 8(2) of the [Rent Restriction Act](#).
14. Further that the appeal was filed after 31 days beyond the 30 days' period provided for appeals from the subordinate court to the high court or the 15 days provided under the [Rent Restriction Act](#). This the respondent submitted is inordinate delay.
15. That the appellant's application has not met the threshold laid out in Order 42 rule 6 seeking stay. The appellant has not demonstrated that he will suffer unduly if the order issued on 31/08/2023 is implemented.
16. On the 8/11/2023 when the parties appeared in court directions were issued on how to dispose of both the preliminary objection and the Appeal.
17. First I will dispose of the preliminary objection raised by the respondent.
18. Having reviewed the Grounds of Appeal, as well as the written submissions filed and exchanged by the parties and having similarly taken cognizance of the proceedings that were conducted before the Tribunal for the Preliminary Objection I find that there is only one germane issue for determination which is; Whether the subject Appeal is competent in line with the provisions of Section 8 and 8(2) of the [Rent Restriction Act](#), as read together with the provisions of Rule 2 of the Rent Restriction (Appeals) Rules.
19. The respondent has contended that the appellant did not exhaust the mechanisms of appeal provided under the Section 8(2) of the [Rent Restriction Act](#) and therefore the appeal is wrongly before this court. Further that the appeal was filed out of time.
20. 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) of the [Rent Restriction Act](#), herein provides a Right of Appeal to any party, who is aggrieved and/or dissatisfied with the ruling and/or decision of the tribunal. For clarity, the said Section provides as hereunder;

8. Appeals;



1. Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.
 2. An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases—
 - (a) in the case of an order under subsection (5) of section 6;
 - (b) or (b) on any point of law; or
 - (c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law,
21. Section 13(2) of the *Environment and Land Court Act* outlines the disputes which this court has powers to hear and determine, and subsection 4 further confers this court with the appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
22. In the instant case, the appellant moved this court for stay of the Rent Restriction Tribunal's order dated 31/08/2023 pending appeal and thereafter filed a Memorandum of appeal dated 26/09/2023.
23. Section 4 of the *Rent Restriction Act* establishes the Tribunal, while Section 8 provides:
1. Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.
 2. An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases –
 - a. in the case of an order under subsection (5) of section 6; or
 - b. on any point of law; or
 - (c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law, and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact...
24. The said appeal is on the grounds inter alia that the Chairman did not take into account the plea of the applicant on the issue of accessibility of schooling for his children or that there is no valid reason given to elicit the appellant to move. These and many other issues were listed in the Memorandum of Appeal. These are issues of fact which the appellant can bring before this court on appeal.
25. 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. It follows therefore that the appellant was right in seeking an appeal from the Environment and Land Court.
26. I also note that this appeal was filed on 26/09/2023 for a decisions of the Rent Restriction Tribunal on 31/08/2023. If we are to consider that an appeal from the subordinate court to Environment and Land Court shall follow the 30 days rule as per the *Civil Procedure Act*.



27. Section 79G of the *Civil Procedure Act* provides as follows;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

28. I therefore find that the preliminary objection is indeed not merited because the appellant filed the appeal right within the time provided under Sections 79 G of the *Civil Procedure Act*.
29. I now have to examine the issue of the competency of the appeal before the court. I have re-evaluated the evidence on record from the Rent Restriction Tribunal. It is my finding that the appellant was accorded a fair hearing at the Tribunal.
30. A landlord can issue a notice of termination of a tenancy where a tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or where the tenant has persistently delayed in paying rent which has become due or payable. It follows therefore that what the tribunal was to decide was whether the respondent had established that the appellant had defaulted in paying rent and that the rent had become due or payable or that the appellant had persistently delayed in paying rent. The tribunal’s findings on both issues were in the affirmative.
31. In fact one of the grounds of appeal stated by the appellant is that he owed Kesh 100,000 and that following the directive of the chairman he had paid the whole amount save for Kesh 35,000 which he had made by way of a post-dated cheque. This is evidence that he should have adduced at the trial.
32. This being a first appeal, the court has a duty to consider and re-evaluate the evidence on record and to draw its own conclusions although it has to bear in mind that it did not have the advantage of seeing and hearing the witnesses who testified before the tribunal. See, the case of Verani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd [2004] 2 KLR 269 and Selle v Associated Motor Boat Co. Ltd. [1968] E.A 123 on the duty of the first appellate court.
33. It is also well established that an appellate court will not ordinarily interfere with the findings of fact by the trial court unless they were not based on evidence at all, or on misapprehension of the evidence or where it is demonstrated that the court acted on wrong principles in reaching its conclusion. See, Peter v Sunday Post Ltd. [1958] E.A 424 and Makube v Nyamuro[1983] KLR 403. After carefully reviewing the evidence that was placed before the tribunal, I am unable to disturb the findings of the tribunal on the two issues that were before it for determination.
34. From the material that was before the tribunal, the tribunal cannot be faulted for finding that the appellant was in rent arrears and had on his own motion proposed to pay the outstanding rent of Kesh 112229 with 60 days vide the Notice of Motion Application dated 6/04/2022.
35. The statements of account that the appellant placed before the tribunal showed that the appellant had paid rent of Kshs.60,335 as at 5th May 2022 to make good his promise. However, on 17/06/2022 the appellant obtained an order from the court seeking extension period within which to clear the outstanding arrears, in default the defendant to be granted leave to levy. At the same time the appellant made another payment of Kesh 30,840 by 19/09/2022.



36. Another Order was issued on 1/03/2023 where judgment was entered on admission for the Defendant/Landlord against the plaintiff (appellant) in the sum of Kesh 24,317 as at 28/2/2023 and that the plaintiff was to pay Kesh 25,000 or before 15/03/2023 and clear the rent for March 2023 by 31/03/2023 and thereafter pay rent regularly. The matter was scheduled for hearing on 9/05/2023 but the plaintiff/appellant requested for a different date since in his letter to the chairman he had a personal issue to attend to. At the hearing of 22/08/2023 where both the plaintiff and defendant were hearing the Tribunal Chairman granted the plaintiff until 30/10/2023 to seek alternative accommodation and deliver vacant possession subject to paying the outstanding arrears plus accrued rent.
37. The appeal is premised on the grounds that the Rent Restriction Tribunal gave the appellant upto 30/10/2023 to vacate the suit premises; that the applicant has filed a Notice of Appeal against the said judgment contending that the court needs to give him a date to have the matter heard before he vacates the suit premises.
38. I have examined the entire record of the Tribunal and established that the appellant was given ample time to be heard and to make good all his promises to settle the rent owed.
39. The respondent has opposed the appeal as already stated and captured hereabove. She has deposed that the applicant has occupied the suit house without payment and this appeal is a ploy to deny her the fruit of the judgment.
40. The plaintiff/appellant approached this court seeking stay for the order which was granted and then he filed the instant appeal.
41. On the issue as to whether the appellant had persistently delayed in paying rent after the same had become due, again the findings of the tribunal cannot be faulted. The evidence that was placed before the tribunal left no doubt that the appellant was struggling to pay rent. The tribunal did not therefore err in its finding that appellant was inconsistent in its rent payments and should clear the accrued rent and then vacate the suit premises.

Disposal Orders

- i. I find no merit in the appellant's appeal and given the circumstances of the case, I am decline to set aside the decision of the Honorable Chairman made on 31/08/2023.
- ii. The stay order granted on 18/10/2023 is hereby vacated.
- iii. Each party to bear their own costs of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JANUARY 2024.

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MOGENI J

JUDGE

In the Virtual presence of :-

Mr Abdul Rashid for the Appellant

Ms. Susan Kagwe for the Respondent/ Landlord

Ms. C. Sagina : Court Assistant



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MOGENI J
JUDGE

