



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELCA NO. 23 OF 2016

MOHAMED ALI MOHAMED & OTHERS.....APPELLANTS

VERSUS

CONSOLATA K. MAINGI & 2 OTHERS.....RESPONDENTS

AND

JUDGMENT

1. The Appellants have filed this appeal from the ruling and order of the Rent Restriction Tribunal (Mr. Hillary K. Korir, Chairman) delivered on 30th August 2016 in **Rent Restriction Case No.48 of 2014** which was consolidated with **Rent Restriction Case No.24 of 2014**.

2. The Appellants had challenged the *Locus standi* of the Respondents to apply for assessment and also challenged the assessment or the standard rent. The Tribunal considered that the respondents argued that they were the appointed administrators of their late husband's estate as per copies of the grant that were produced. The Tribunal further held that it had power to assess standard rent without any condition precedent.

3. It is apparent that there were separate valuations by the Tribunal valuer, the tenants and the landlords. In the ruling, the Tribunal stated:

“Having considered all the three valuation reports vis-à-vis the need to render justice to both the parties under the prevailing economic conditions, the Tribunal finds the report by the Tribunal valuer dated 22/1/15 to be reasonable in the circumstances and directs that the standard rent be and is hereby fixed as recommended therein to take effect from 1st October, 2016”

4. In their memorandum of Appeal dated 29th September, 2016, the Appellants have raised the following grounds:

1) That the learned Chairman erred in allowing the review based on cost of construction yet the Respondent did not construct the premises.

2) That the learned judge (sic) erred in law allowing the review based on the cost of construction yet there was no evidence of the construction.

3) That the learned Judge (sic) erred in law in relying on the Assessment Report of the Tribunal when the said Report had not been produced in evidence.

4) That the learned Judge (sic) erred in law in failing to consider the issues raised by the Appellants.

5) That on the whole the ruling and Order of the learned Chairman cannot be supported by the evidence and submissions on record.

5. The Appellants conceded before the court that the proceedings filed were not complete. Before the commencement of the hearing of this appeal, Ms. Wambani, Advocate for the appellants sought leave of the court to file a supplementary record of appeal and the court granted the request. However, no supplementary record has been filed by the time the appeal came up for hearing. It is therefore, clear from the foregoing that the record of appeal lodged herein did not contain all the relevant documents produced at the trial. This default is admitted by the appellants who applied for leave to file a supplementary record, but did not do so despite being granted leave to do so. There is no doubt that the documents or proceedings left out are vital for the determination of this appeal. This being a first appeal, my primary role as a first

appellate court is to re-evaluate, re-assess and re-analyse the extract on the record and then determine whether the conclusions reached by the Tribunal are to stand or not and give reasons either way. However, in the absence of a complete record, I do not think that I am in a position to do so. It was the duty of the appellants to avail a complete record of what transpired at the Tribunal. The appellants are aware that what is before court is an incomplete record. In the result, the appeal is incompetent and ought to be struck out.

6. For the sake of completeness, I may add that as rightly pointed out by the Respondents in their submissions, the appellants written submission are omnibus and confusing. It is not clear on the body of it whether it is in respect of an application for stay or appeal or both. I do not think the written submissions filed by the Appellants are of much assistance in the instant case since they seem to relate to an Application for stay of execution.

7. Accordingly and for the reasons above stated, I find that the appeal is incompetent and must be, as is hereby is struck out with costs.

DATED, DELIVERED and SIGNED at MOMBASA this 26th day of September, 2018

C. YANO

JUDGE