



Kenya Railways Corporation & another v Okuthe t/a La Place Restaurant (Environment and Land Appeal E013 of 2023) [2024] KEELC 1801 (KLR) (22 March 2024) (Judgment)

Neutral citation: [2024] KEELC 1801 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E013 OF 2023
EK WABWOTO, J
MARCH 22, 2024**

BETWEEN

KENYA RAILWAYS CORPORATION 1ST APPELLANT

KENYA RAILWAYS STAFF BENEFITS SCHEME 2ND APPELLANT

AND

RUTH FLORENCE OKUTHE T/A LA PLACE RESTAURANT ... RESPONDENT

(Appeal against the decision of the Business Premises Rent Tribunal in Nairobi BPRT Case No. E482 of 2021 delivered on 1st February, 2023.)

JUDGMENT

1. The appeal herein is against the decision of the Business Premises Rent Tribunal in Nairobi BPRT Case No. E482 of 2021 delivered on 1st February, 2023. In the said decision, the Tribunal issued the following orders:
 - a. The tenant's Reference dated 17th August, 2021 is hereby upheld in the following terms:
 - b. The Landlord shall pay to the tenant damages of Kshs 1,345,400/= plus interest from the date of filing Reference within 30 days.
 - c. Tenants shall have costs.
2. The Appellants being aggrieved by the said decision filed this appeal vide a Memorandum of Appeal dated 10th February, 2023 wherein the following grounds were raised.
 - a. The Tribunal erred in law and fact by finding that the Respondent was the Appellants Tenant.



- b. The Tribunal erred in law and fact by finding that it had the jurisdiction to hear the reference and issue any orders as per Section 12 of the Landlords and Tenant (Shops, Hotels and Catering Establishments) Act given that the Respondent was not the Appellants Tenant.
 - c. The Tribunal erred in law and fact by finding that it has the jurisdiction to assess and award damages.
 - d. The Tribunal erred in law and fact by failing to find that the Respondent had not specifically proven the special damages it sought.
 - e. The Tribunal erred in law and fact by awarding the Respondent the sum of Kshs 1,547,800/=.
 - f. The Tribunal erred in law and in fact by awarding damages, which is a conclusive order, at an interlocutory stage of the proceedings before the reference could be heard at trial.
3. The Appellants thus sought the following orders in respect to this appeal:
 - a. That the appeal be allowed.
 - b. That the Ruling dated 1st June, 2023 and any resultant orders be set aside.
 - c. That the costs of this Appeal be awarded to the Appellants.
 - d. That this Honourable Court be pleased to issue any order it deems just and fit to grant.
4. At the hearing of this appeal, parties took directions that the same be canvassed by way of written submissions. Both parties complied and filed their respective written submissions. The Appellants filed written submissions dated 16th August 2023 while the Respondent filed written submissions dated 11th October, 2023.
5. The Appellants submitted on the following four issues:
 - i. Whether there was a landlord-tenant relationship between the parties at the time the Tribunal entertained this matter?
 - ii. Whether the Tribunal had the jurisdiction to assess damages?
 - iii. Whether the Respondent was entitled to general damages?
 - iv. Whether the Tribunal misdirected itself in awarding special damages which had not been strictly pleaded and proven as against the Appellant.
6. The Appellants submitted that the Tribunal erred in law and fact by failing to find that there existed no tenancy relationship between the parties. It was submitted that the lease agreement between the parties expired on 31st May, 2021 and the Respondent filed its reference before the Tribunal on 17th August, 2022 and as such there was no existing tenancy relationship between the parties. It was also submitted that the Tenant was evicted from the Appellant's premises for unlawfully occupying the premises and as such the Tribunal did not have jurisdiction to determine the Reference. Reliance was placed on the following cases in support of this position: Michael Gachie Mwarangu vs Peter Gicheru Maina and 2 others [2016] eKLR, Republic vrs. Chairperson Business Premises Rent Tribunal at Nairobi



- & Another *Exparte Suraj Housing & Properties Limited & 2 others* [2016] eKLR and *Republic vrs. Business Premises Rent Tribunal & Another Exparte Davies Motor Corporation Limited* [2013] eKLR.
7. On whether the Tribunal had the jurisdiction to assess damages, it was submitted that the Respondent did not move the Court properly in view of the fact that the Respondent's request for assessment of damages was brought vide a witness statement dated 2nd June, 2022. It was submitted that the Respondent's request for assessment was based on the Appellants alleged disobedience of an order of the Tribunal and therefore for all intents and purposes the Respondent was seeking to have the Tribunal enforce its own orders. Reliance was placed on the case of *Travel Planners Limited vs Managing Director, Kenya Railways Corporation & Another* [2008] eKLR.
 8. On whether the Respondent was entitled to general damages, it was submitted that the award of Kshs 1,345,400/= as damages for breach of Contract is unjustified, excessive and oppressive. It was argued that the Tribunal erred in law and fact by failing to consider that there was no existing Contract between the parties and as such the Tribunal misdirected itself in awarding the said damages. It was also argued that an award of general damages involves exercise of discretion by the trial Court/Tribunal and it is settled law that an appellate Court will not interfere with exercise of that discretion unless it was wrongly based on irrelevant factors or failed to consider relevant factors which resulted into an injustice. Reliance was based on the Cases of *Kemfro Africa Limited t/a Meru Express Services* [1976] & *Another vs Lubia and Another (No.2)* [1985] eKLR, *Johnson Evan Gicheru vs Andrew Morton & Another* [2005 eKLR and *Hydro Water Well (K) Limited vs Sechere & 2 others* (sued in their representative capacity as the officers of Chae Kenya Society) Civil Suit E212 of 2019 [2021] KEHC 22 [KLR] (Commercial and Tax) (10 August, 2021) Judgment.
 9. On whether the Tribunal misdirected itself in awarding special damages which had not been strictly pleaded and proven as against the Appellant, it was submitted that the Respondent did not tender any evidence to guide the Tribunal on the value of the alleged goods lost neither did she provide any proof of ownership in relation to the goods she allegedly lost during the eviction. It was submitted that the Respondent presented a schedule of the goods it purports to have lost but did not adduce any receipts or other proof of purchase to establish ownership of the said goods and the value. Reliance was made to the cases of *Siree -vs- Lake Turkana El Molo Lodges* (2002) 2 EA 521, *Raphael M. Muju -vs- Direcotr Social Services & Housing & 3 others* (2015) eKLR, *Capital Fish Limited -vs- Kenya Power and Lighting Company Limited* (2016) eKLR and *David Bagine -vs- Martin Bundi* (1997) eKLR. The Court was urged to allow the appeal as prayed.
 10. The Respondent submitted on the following issues:
 - i. Whether the Respondent was the Appellants Tenant.
 - ii. Whether the Tribunal had powers to issue any orders under Section 12 of the *Landlord and Tenant (shops, Hotels and Catering Establishments) Act*.
 - iii. Whether the Tribunal had powers to assess and award damages.
 11. It was submitted that the evidence presented before the Tribunal showed that the Appellant and the Respondent were in a Landlord-Tenant relationship. It was submitted that prior to the violent eviction of the Respondent, the 1st Appellant's own General Manager authored an Internal Memo for the eviction of the Respondent for the reason that she had challenged the revised rent for the rented space. It was contended that the 1st Appellant's own Ag. General Manager of Business and Operations, Ms. Omido had repeatedly referred to the Respondent as their tenant. It was contended that there was a landlord –tenant relationship as between the Appellants and the Respondent and accordingly, the



- Tribunal cannot be faulted for finding that the Respondent was the Appellants tenant at the rented space.
12. On whether the Tribunal had powers under Section 12 of Cap 301 to issue any orders including assessment of the Respondent's loss, it was argued that under Section 12 of Cap 301, the Tribunal could validly assess and award damages for the loss suffered by the Respondent flowing from the irregular eviction. It was argued that the Tribunal made an assessment of the loss suffered by the Respondent flowing from the Appellant's actions of disobeying of the Tribunal Orders which did not amount to execution proceedings as erroneously suggested by the Appellants. Reliance was placed to the cases of *Lena Sarange -vs- Robert Oyieko Angoi* [2020] eKLR and *Migiro -vs- Paintmart and Allied Building Equipment [K] Limited (civil Suit E448 of 2021)* [2023] KEELC 18523 (KLR) (6 July, 2023) (Ruling). The Respondent urged the Court to dismiss the Appellants Appeal with costs.
 13. The Court has considered the entire record of appeal, the Memorandum and grounds raised in this appeal together with parties written submissions and has outlined the following issues for determination.
 - i. Whether there existed a landlord Tenant relationship between the Parties at the time of filing the reference.
 - ii. Whether the Tribunal had powers to assess and award damages.
 - iii. What orders should issue as to costs.
 14. The Appellants contends that the Tribunal erred in law and fact by finding that the Respondent was the Appellants tenant. During the proceedings before the Tribunal, the Tribunal in addressing itself on this issue found that there was a controlled tenancy between the parties and hence, it had jurisdiction over the matter. The evidence placed before the Tribunal was to the effect that the Respondent took up the premises in 1997 which was being managed by the 1st Appellant upto and until 2007 when they transferred the same to the 2nd Appellant. In 2020, there arose controversy surrounding who was to be the landlord over the let premises and in 2021, the 1st Appellant took over the let premises as the landlord. Fast forward, the 1st Appellant issued an offer of lease dated 9th August, 2021 which set out the terms of the lease for the property that was occupied. The said offer stipulated that the terms of the lease would be six months (renewable) subject to 2 months' termination notice by either party with effect from 1st September, 2021. The Respondent being aggrieved by the said change of terms filed a reference before the Tribunal. It was argued that the terms were varied as follows:
 - i. The tenancy period was changed from 2 years to 6 months.
 - ii. Quarterly rent was changed from Kshs 108,817 to Kshs 249,284.00
 - iii. Rent paying period changed from monthly in arrears to quarterly in advance.
 15. Having considered and evaluated the evidence herein, it is the finding of this Court that there indeed exist a controlled tenancy and as such there was a landlord and tenancy relationship. The lack of a formal agreement as at the time of filing the reference before the Tribunal can only be construed to the protection of the Respondent as is set out in the Preamble of CAP 301.
 16. The Second issue is whether the Tribunal had powers to assess and award damages. the Appellant argued that pursuant to Section 14 of Cap 401, the Tribunal lacks the authority to enforce its own orders as that is the sole privy of the Court. The Respondent on the other hand submitted that the



Appellants had misapprehended the decision made by the Tribunal by mistaking it as one for execution of damages and not assessment of damages.

17. A perusal of the record of appeal herein shows clearly that the Tribunal pronounced itself and made an assessment of the loss suffered by the Respondent flowing from the Appellant's breach of the Tribunal orders. This did not amount to execution proceedings and as such, it is the finding of this Court that the Tribunal did not err when it granted the Respondent damages. The Appellant's contention on the same fails.
18. In view of the foregoing and having considered the entire record of appeal together with the grounds raised by the Appellant, it is the finding of this Court that the appeal lacks merit and the same is dismissed with an order that each party to bear own costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024.

E.K. WABWOTO

JUDGE.

In the virtual presence of:

Ms. Maalim for Appellants.

Mr. Simiyu for the Respondent.

Court Assistant Caroline Nafuna.

