



REPUBLIC OF KENYA



**Kamau v Magari (Environment and Land Appeal E007 of 2023)
[2024] KEELC 1794 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1794 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

**J OMANGE, J
MARCH 21, 2024**

BETWEEN

ANTONY KOMU KAMAU APPELLANT

AND

JOSEPHINE WAIRIMU MAGARI RESPONDENT

(Being an appeal from the ruling/orders of the honourable Vice Chairman of the Business Rent Tribunal delivered on 18th January 2023 and 25th January 2023 by the Vice Chairman of the tribunal in case number 621 of 2022 (Nairobi) consolidated with others)

JUDGMENT

1. This appeal arises out of a Landlord/Tenant relationship in respect of the property known as Plot 777/1 Plot 16 and 23 within Karen/ Langata area. It is not in dispute that the Respondent/ Landlady is the owner of the premises while the Appellant/Tenant is a tenant carrying out business in the said premise. Following disputes between the landlady and the tenant the Business Premises Tribunal delivered a ruling on 18th day of January, 2023 which Ruling the Tenant has appealed against.
2. The Appellant/Tenant in an appeal filed an appeal dated 28th January 2023 on the following grounds:-
 1. That the learned vice chairman of the tribunal erred in facts and in the Law in holding that the tenant reference filed in case number E828/2022 could be dismissed when the preliminary objection was not even heard on merit.
 2. That the honourable vice chairman of the tribunal erred in law by consolidating matters which were not subject of the matter when he had given orders in case number E750/2022 for the tenant to file reference in any issued notice.
 3. That the honourable vice chairman of the tribunal erred in law in giving verdict of the cases that were not consolidated.



4. That the vice chairman erred in law for not taking into consideration that the assessment report was not given out to the Appellant for scrutiny, comments and inquiry.
 5. That the honourable vice chairman of the tribunal erred in law by failing to take into consideration that the Appellant was given an empty plot that he built semi-permanent structures to rent to subtenant for the last almost 10 years.
 6. That the honourable vice chairman of the tribunal exercised his jurisdiction un-judiciary into not taking that the report given was subject to inquiry and or comments when it was not supplied or given to the Appellant.
 7. That the honourable vice chairman of the tribunal was and did the ruling and orders for eviction not taking into consideration that the tenant was given an option to file a reference in any of the issued notices to terminate the tenancy dated 22nd June 2022 or 1st July 2022 in case number E750 of 2022 and which was filed as case number E828 of 2022.
 8. That the honourable vice chairman of the tribunal erred in law and fact into not taking into consideration that the tenant was not in any agreement that was put in writing not to sub-rent the empty spaces given out.
 9. That the honourable vice chairman of the tribunal erred in law not taking into consideration that the tenant has been paying his rent always and no time he was sent auctioneers as stated in his ruling.
 10. That the honourable vice chairman of the tribunal was driven by malice any or otherwise to give unconsidered ruling in matters in hasty.
 11. That the honorable vice chairman of the tribunal erred in law and facts to know the matter before him needed evidence in open tribunal or through portal system and he could not deal with them premature.
 12. That the honourable vice chairman of the tribunal erred in law and facts in not taking into consideration the evidential materials that were before him.
 13. That the honourable vice chairman erred in law and facts into not taking into consideration the meaning and provisions in the preamble of Cap 301 Laws of Kenya-“To protect the tenants of such premises from eviction or from exploitation.....”
3. The court directed that the appeal be canvassed by way of written submissions. Both parties have filed submissions. The Appellant’s submission is that the tribunal erred in consolidating the hearing of various references and that the Preliminary Objection should have been addressed first. The issue of the two notices also came up in the Appellant’s supplementary submissions. The appellant further argues that the parties were not given a chance to comment on the report. It is also the Appellant contention that the proceedings were scanty and resulted in an unjust Judgement. Lastly the Tribunal failed to exercise its investigate powers and jurisdiction.
 4. The Respondent on their part aver that the consolidation was not irregular as the Court has discretionary power to consolidate suits. That the appellant was heard on all issues. That the Tenant was the author of his own misfortunes as he chose to respond to the inconsequential notice and not the valid notice. That the appellant had a chance to report on the inspection report and failed to do so.
 5. The only issue that the court has to determine is whether the appeal is warranted.



6. This being a first appeal, the court is under a duty to reconsider the evidence adduced and analyze it so as to be able to reach its own independent conclusions and thus determine whether the conclusions reached by the trial court are consistent with the evidence and the applicable law, the appellate court will only depart from the findings by the trial Court if they were not based on the evidence on record; where the said Court is shown to have acted on wrong principles of law or where its discretion was exercised injudiciously as held in *Mbogo & Another v Shab* (1968) EA 93. In *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR the Court held that:

“ this being a first appeal, it is trite law that this court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this court from a trial by the High Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.
7. An appellate Court would not normally interfere with exercise of the discretion of the lower court unless it has not been exercised judiciously. As to what the term “discretion” means the Court in The Supreme Court of Uganda, in *Kiriisa v Attorney-General and Another* [1990-1994] EA 258 stated that: “Discretion simply means the faculty of deciding or determining in accordance with circumstances and what seems just, fair, right, equitable and reasonable in those circumstances.” That discretion being wide, the main issue before this court is for the court to do justice to the parties, and in so doing the court will not impose conditions on itself to fetter the wide discretion given to it by the rules of procedure. This court should however ask itself under what conditions, if any, it ought to set aside the Judgement and such conditions, if appropriate, must be just to both the Appellants and the 1st Respondent.”
8. Having considered the grounds of the appeal, the submissions by both counsel, I find that the appeal is premised mainly on three grounds; that the Tribunal erred in consolidating the various references and the Preliminary Objection which the Appellant/Tenant argues should have been disposed of first. The proceedings reveal that on the 24th August, 2023 when the matter came up for mention, an order was issued consolidating E 621/ 2022 and 606 of 2022. Both parties were represented in court. There was no objection to the consolidation. On the 21st September, 2023, Counsel for the Appellant Mr. Thurairia brought to the attention of the Tribunal the existence of E 750 of 2022 by the Tenant. This case was also consolidated with the other matters. It is therefore clear that all parties were unanimous that the efficient manner to handle the matters before the Tribunal was to consolidate them.
9. This was in line with the law. Section 5 (3) of the *Landlord and Tenants Act* allows consolidation of any references by tenants and sub tenants. And even more important courts have a duty under Section 1 A and B of the *Civil Procedure Act* to give effect to the overriding objectives which include; the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties. It is efficient use of the courts time to consolidate references wherein the issues to be addressed arise from the same cause of action or related. It is also the practice in our courts now for matters to proceed by way of written submissions in the interest of expeditious determination of matters. The Tribunal cannot be faulted for proceeding in this manner.
10. The Appellant/Tenant contends that they were not given a chance to comment on the inspection report. The court record shows that the matter came up on 5th October, 2022, 31st October, 2022



and 15th November, 2022. On all these occasions the Court directed that the parties were to comment on the report. The failure of the Appellant to comply with the courts directions cannot be used to challenge the Tribunal's decision.

11. The Appellant/Tenant insisted that the issuances of the two notices caused confusion. This issue was adequately addressed by the Tribunal which delivered a ruling allowing the Appellant/ Tenant leave to file a reference out of time and to respond to either of the notices. The Appellant chose to respond to the notice which was invalid. It is not easy to understand why the Tenant chose not to respond to the notice which had actually given two months' notice as envisaged by the Act. In the absence of any response section 10 of the Act was applicable.
12. The upshot of the foregoing is that the appeal has no merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF MARCH 2024.

JUDY OMANGE

JUDGE

In the presence of: -

Ms Nafula for the Respondent

Appellant in person

Steve - Court Assistant

