



REPUBLIC OF KENYA



**Mwangi & 10 others v Registered Trustees of Shree Cutch Satsang Swaminarayan & another
(Civil Application E029 of 2024) [2024] KECA 1908 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1908 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E029 OF 2024
AK MURGOR, KI LAIBUTA & GV ODUNGA, JJA
OCTOBER 11, 2024**

BETWEEN

**ANDREW MWANGI 1ST APPLICANT
ANGELA MUNYAO 2ND APPLICANT
BEVAN I. WYNES 3RD APPLICANT
ALICE ADHIAMBO OBUOLA 4TH APPLICANT
DAVID AKOYO OBARE 5TH APPLICANT
FARIDAH K. MBALA 6TH APPLICANT
BEATRICE JUMWA KARISA 7TH APPLICANT
JANE WANGECI MAINA 8TH APPLICANT
FELISTAS W. NJOROGE 9TH APPLICANT
NANCY WAKARINDI GACHAGE 10TH APPLICANT
WAKESHO MWAKIO 11TH APPLICANT**

AND

**THE REGISTERED TRUSTEES OF SHREE CUTCH SATSANG
SWAMINARAYAN 1ST RESPONDENT
ALFAJIRI AUCTIONEERS 2ND RESPONDENT**

*(Being an application for an injunction pending appeal against
the Ruling and Orders of the High Court of Kenya at Mombasa (F.
Wangari, J.) dated 23rd February 2024 in HCCA No. E264 of 2023)*



RULING

1. The applicants were at all material times tenants in occupation of different units comprised of bedsitters and single-bedroom residential houses in the 1st respondent's premises situate in the Nyali area of the City of Mombasa at monthly rentals ranging from Kshs. 14,000 (for bedsitters) to Kshs. 17,000 (for single-bedroom units).
2. In an attempt to resist the 1st respondent's decision to increase their rent by Kshs. 2,000 in each case by a notice issued sometime in December 2019, the applicants moved to the Rent Restriction Tribunal at Mombasa in Mombasa RRC No. 153 of 2019 seeking assessment of the standard rent on account of their respective units in the demised premises. They obtained interim orders dated 24th December 2019 staying the increment of rent pending hearing of their application for assessment of standard rent, which was duly assessed and determined at KShs. 8,250 for bedsitters and KShs. 14,000 for the single-bedroom units with effect from 1st May 2023 as shown in the Rent Control Certificate dated 12th April 2023.
3. By a notice dated 28th April 2023, the 1st respondent demanded payment by the applicants of respective rent arrears allegedly due and payable for the period between June 2022 to April 2023, failing which the 1st respondent instructed the 2nd respondent to levy distress, which it did on 8th May 2023 thereby prompting the applicants to file suit against the 1st and 2nd respondents in the Resident Magistrate's Court at Mombasa in RMCC No. E545 of 2023 seeking: a declaration that the rent demanded by the respondents was unlawful, null and void; a permanent injunction restraining the respondents from demanding, levying distress and/or from interfering with the applicants' tenancy on the suit premises on account of the "illegal" rent demanded; general damages for wrongful distress and harassment; and costs.
4. In addition to the suit, the applicants filed an application dated 19th May 2023 seeking: stay of execution of the distress for rent pending hearing and determination of their suit; and injunctive relief to restrain the respondents from evicting them, harassing them or demanding the "illegal" rent pending hearing and determination of their suit.
5. The applicants' Motion was allowed vide an order of J. Nyariki, SRM dated 5th June 2023, but on condition that the applicants pay the arrears due and owing to the 1st respondent within 7 days of the order.
6. The applicants filed another application dated 7th June 2023 seeking: a temporary stay of execution of the order dated 5th June 2023 pending determination of the main suit; an order that the 1st respondent issue statements to the applicants showing rent paid and owing, if any, from the date of filing suit at the Tribunal and in accordance with the Tribunal's order dated 24th December 2019 and the Rent Control Certificate dated 12th April 2023; and an order reviewing or setting aside the court's order dated 5th June 2023.
7. The applicants' Motion was dismissed by the ruling of Hon. J. Nyariki (SRM) dated 19th September 2023 upon finding, inter alia, that the application was res judicata as the court had issued an order on 5th June 2023 in the applicants' previous application dated 19th May 2023 involving the same parties and subject matter; that the applicants had refused to comply with the said orders; and that the 1st respondent had a right to levy distress for rent after the Tribunal had standardized the rent payable and directed the applicants to pay their rent arrears from 1st May 2023.



8. The said ruling was the basis of the applicants' appeal to the High Court of Kenya at Mombasa in HCCA No. E264 of 2023 in which the applicants moved the court vide their application dated 22nd September 2023 seeking: temporary preservative orders restraining the respondents from levying distress against them to recover the disputed rent increments and penalties in terms of the orders issued by the Tribunal on 24th December 2019 to 12th April 2023; an order that the applicants continue paying their respective monthly rents in terms of the Rent Control Certificate issued by the Tribunal on 12th April 2023 pending hearing and determination of the appeal; and that costs of the application be in the appeal.
9. By a ruling dated 23rd February 2024, the High Court (F. Wangari, J.) dismissed the applicants' Motion on the grounds, inter alia, that the applicants had sought redress from the Tribunal, which had no jurisdiction to assess standard rent; that the orders of the Tribunal in that regard were a nullity; that theirs was not a proper case for grant of injunctive orders or the temporary preservative orders sought; and that the applicants had not established a prima facie case to justify a grant of such orders. She directed that the matter be fixed for directions on the hearing of the main appeal.
10. Dissatisfied by the ruling and order of F. Wangari, J., the applicants moved to this Court on appeal on 8 grounds set out on the face of their memorandum of appeal dated 19th March 2024 faulting the learned Judge for, inter alia: failing to consider the issues raised by the applicants in the suit and in their submissions; failing to understand, analyse, and/or interpret the provisions of the [Rent Restriction Act](#) on what constitutes standard rent and how it is achievable; failing to appreciate that the applicants moved to the Tribunal for the assessment of the standard rent, which the [Rent Restriction Act](#) gives power to the Tribunal to assess and determine in all residential dwellings; declaring that the Rent Control Certificate issued by the Tribunal a nullity, thereby shutting out the applicants in their pursuit of justice; misinterpreting the [Rent Restriction Act](#) and disregarding the powers of the Tribunal; asserting that the Tribunal had no powers to assess standard rent for residential dwelling in which the rent payable exceeds Kshs. 2,500 without considering that it is only after such standard rent had been ascertained that the Tribunal shall have no mandate to conduct further hearing on dwellings whose rent exceeds Kshs. 2,500; in failing to find that the disputed rent was an amount above the standard rent on account of which distress was levied; and that the purpose of the appeal was for a declaration as to whether the ascertained rent was payable to the 1st respondent.
11. Pending determination of the appeal, the applicants filed a Notice of Motion dated 21st March 2024 supported by the annexed affidavit of Andrew Mwangi, the 1st applicant, essentially deposing to the foregoing sequence of events preceding the appeal and the grounds on which it is anchored. They now seek orders of temporary injunction to restrain the respondents from levying distress against them on the disputed rent increment and penalties in terms of the orders issued by the Tribunal on 24th December 2019 to 12th April 2023; orders that the applicants continue paying monthly rent in terms of the Rent Control Certificate issued by the Tribunal on 12th April 2023 pending hearing and determination of the appeal; and that the costs of their application be in the appeal.
12. The grounds forming the basis of the Motion were principally that, on 11th March 2024, the respondents issued fresh distress notices demanding the disputed rent following the above-mentioned ruling of the High Court; that the applicants' appeal raises serious issues of law; that the appeal is arguable, and has high chances of success; and that there is need to maintain the status quo to prevent the appeal from being rendered nugatory; that, unless this Court grants the orders sought, the applicants are bound to suffer great loss and damage; and that the respondents will not suffer any prejudice should the application be allowed.



13. Supporting the Motion, learned counsel for the applicants, M/s. Bunde Mangaro & Co., filed written submissions dated 30th April 2024 citing 4 judicial authorities, all of which relate to the requirements for grant of orders of injunction in lower courts, but which have no bearing on the twin principles for grant of stay of execution or proceedings, or for grant of preservative orders pursuant to rule 5(2) (b) of the Court of Appeal Rules pending appeal.
14. Opposing the applicants' Motion, the respondents filed a replying affidavit of Morris Mrema Ndurya (the 1st respondent's caretaker) sworn on 9th April 2024, deposing to the relevant facts constituting the background to the suits, applications and the appeal before us, which we need not replicate here. According to the deponent, section 2(1) (c) of the [Rent Restriction Act](#) only gives the Tribunal powers and authority to handle matters that arise from tenancies in dwelling houses whose rent does not exceed Kshs. 2,500; that upon assessment, ascertainment and certification of the rents in issue, the valuation report disclosed that the pecuniary jurisdiction of the Tribunal to hear and determine the dispute was ousted by dint of section 2(1) (c) of the Act; that the applicants continue in default of rent; and that, should their application be allowed, it should be conditional to depositing all sums due in a joint interest-earning account in the name of the parties' advocates. They urged us to dismiss the Motion.
15. In response to the respondent's replying affidavit, the applicants filed a further supporting affidavit sworn by the 1st applicant on 12th April 2024. The 1st applicant deposed, inter alia, that the deponent of the replying affidavit was not a party to the suit and had no authority to plead on behalf of the respondents without evidence of express instructions or authority from the respondents; that the said affidavit was inadmissible in law, thereby rendering the applicants' application unopposed; that the Tribunal had jurisdiction, capacity and powers to assess the standard rent under Section 5(1) (a), (b) and (c) of the [Rent Restriction Act](#); that Section 3 of the Act sets out how standard rent is assessed and provides that the assessment of standard rent is the preserve of the Tribunal; that Section 2(1) (c) of the Act cannot apply where standard rent has not been assessed; that the applicants had been paying rent to the 1st respondent as per the assessment of the Tribunal; and that the amount being demanded by the respondent is the increased rent that was stayed by the Tribunal as well as unexplained penalty, advocate collection fees and auctioneers collection charges.
16. Learned counsel for the respondents filed written submissions dated 6th May 2024 citing 2 judicial authorities, which focus on the basic requirements for grant of orders of injunction. Likewise, counsel have not addressed us on the requirements for grant of orders under rule 5(2) (b) of the Rules of this Court with regard to stay of execution, injunctive relief or preservative orders pending appeal.
17. As this Court pronounced itself time and again, for an applicant to merit stay of execution, preservative orders or injunctive relief pursuant to rule 5(2) (b) of the Court of Appeal Rules pending appeal, he or she must demonstrate to the satisfaction of the Court that he or she has an arguable appeal; and that the appeal (or intended appeal as the case may be), if successful, would be rendered nugatory if the orders sought were not granted. The two requirements constitute what is commonly referred to as the twin principles that must be satisfied before such orders can avail (see *Anne Wanjiku Kibeh vs. Clement Kungu Waibara and IEBC* [2020] eKLR; and *Yellow Horse Inns Limited vs. A. A. Kawir Transporters & 4 Others* [2014] eKLR).
18. We also take to mind the fact that, as this Court has often stated, even one ground of appeal is adequate to satisfy the first limb of the twin principle. *University of Nairobi vs. Ricatti Business of East Africa* [2020] eKLR is a case in point.



- 19. The decisive question here is whether the applicants have demonstrated that they have an arguable appeal and, if the answer is in the affirmative, whether their appeal would be rendered nugatory if the interim injunctive relief and preservative orders sought are not granted.
- 20. Turning to the issue as to whether the applicants have an arguable appeal, we hasten to observe that the genesis of the dispute between the parties revolves around the question as to whether the Rent Restriction Tribunal had power under the Act to assess the “standard Rent” in respect of the suit premises in relation to which a Rent Control Certificate dated 12th April 2023 was issued, thereby prompting the litigation that comes thus far. The question is: Did the Tribunal have power under the Act to undertake the assessment of standard rent under the Act, or to issue any orders in respect of the suit premises? Other questions arise as to whether the demised premises fall within the jurisdiction of the Tribunal within section 2 of the Act; and whether the 1st respondent was entitled to charge and increase the monthly rent payable in respect of the demised premises.
- 21. A cursory look at the grounds of appeal advanced in the applicants’ memorandum of appeal, viewed in the backdrop of the record as put to us, reveals substantive issues of law deserving of the Court’s inquiry on second appeal. As already observed, even one ground suffices – see *University of Nairobi vs. Ricatti Business of East Africa* (supra).
- 22. With regard to the 2nd limb of the twin principle, the term “nugatory” was defined in *Reliance Bank Ltd vs. Norlake Investments Ltd* [2002] 1 EA p.227 at p.232 as “worthless, futile or invalid”. It also means “trifling”.
- 23. Having concluded that the applicants’ intended appeal is arguable, the decisive question is whether the intended appeal, if successful, would be rendered nugatory if the injunctive orders sought were not granted. The applicants have not told us that, if the rent demanded is paid in the meantime, the 1st respondent would not be able to refund or render an account thereof in the event that their intended appeal were successful. We find nothing on the record or from the submissions by counsel for the applicants to suggest that the intended appeal (if successful) would be rendered worthless or futile in the event that the orders sought were not granted.
- 24. The applicants having failed to satisfy the twin principles required to be met for grant of orders under rule 5(2) (b) of the Court of Appeal Rules, their Notice of Motion dated 21st March 2024 fails and is hereby dismissed with costs to the respondents. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 11TH DAY OF OCTOBER, 2024

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA C.Arb, FCI Arb.

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is the true copy of the original



signed

DEPUTY REGISTRAR

