



**Amondi v Landlord, Presbyterian Church of East Africa Nairobi West Parish
& 4 others; Permanent Secretary, Ministry of Interir and Co-ordination of
National Government (Interested Party) (Environment and Land Appeal
E065 of 2022) [2024] KEELC 3609 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E065 OF 2022**

OA ANGOTE, J

APRIL 11, 2024

BETWEEN

TOLUWALASE AMONDI APPELLANT

AND

**THE LANDLORD, PRESBYTERIAN CHURCH OF EAST AFRICA NAIROBI
WEST PARISH 1ST RESPONDENT**

JASON M. KAARIA 2ND RESPONDENT

DAVID MUEMA MUNYAO 3RD RESPONDENT

GEORGE ATIERA MOSE 4TH RESPONDENT

GICHURU ADVOCATES 5TH RESPONDENT

AND

**PERMANENT SECRETARY, MINISTRY OF INTERIR AND CO-ORDINATION
OF NATIONAL GOVERNMENT INTERESTED PARTY**

*(Being an appeal from a Judgement of the Rent Restriction Tribunal
in Nairobi in RRT Case No. 159 of 2021 and delivered on 28th April
2022 by Hilary Korir, Chairman of the Rent Restriction Tribunal)*

JUDGMENT

1. Before the Court is the Appellant's appeal in respect of the Judgement delivered by the Rent Restriction Tribunal in Nairobi on 28th April 2022.



2. A brief background is apt. On 3rd December 2020, the Appellant filed a claim before the Business Premises Rent Tribunal (BPRT). He was the tenant in that Claim and PCEA Nairobi West Parish, the 1st Respondent, was the landlord.
3. On 14th December 2020, the Chairman of the BPRT stated in writing that he had spoken to the Appellant and advised him to pursue his claim at the Rent Restriction Tribunal (RRT) because the claim related to lodging and not business premises.
4. On that advise, the Appellant filed RRT Case No. 159 of 2021 before the Rent Restriction Tribunal. He filed a Certificate of Urgency, Supporting Affidavit, Notice of Motion, Plaint, Verifying Affidavit and various supporting documents. The crux of the Appellant's case as presented in those documents was that for a number of years, he resided in a hostel run by the 1st Respondent.
5. It is the Appellant's case that he paid Kshs. 8,000 per month for the same. He averred that around 26th September 2019, a representative of the 1st Respondent obtained orders from the area Chief informing the Appellant that he was no longer allowed on the premises.
6. According to the Appellant, his personal effects and working tools were carried away and that the 1st Respondent's actions forced him to find alternative accommodation. Before the RRT, the Appellant sought for an order that the 1st Respondent pay him Kshs. 1, 960,000 being the damages accrued in seeking alternative accommodation.
7. The 1st Respondent filed a Defence and Counter-claim as well as a witness statement sworn by its hostel manager, David Muema Munyao, dated 18th October 2021. He averred that in January 2018, the Appellant defaulted in paying the Kshs. 8,000 per month rent; that this continued for some time and by August 2019, the Appellant was in arrears of Kshs. 152,000 and that the Appellant paid Kshs. 61,000 leaving an outstanding balance of Kshs. 91,000 which he declined to pay leading the 1st Respondent to issue him with a notice to vacate.
8. The deponent averred that when the Covid-19 pandemic hit, the hostel had to be closed down; that requests were made to the Appellant to collect his belongings but he did not respond and that his items were put in a store.
9. In the Counter-claim, the 1st Respondent averred that the Appellant owed it Kshs. 91,000 and that it asked the RRT to dismiss the Appellant's claim and enter judgement as per the counter-claim and to be awarded damages of Kshs. 91,000 and interest thereon.
10. The record shows that the matter proceeded for hearing on various dates between 21st October 2021 and 15th February 2022. The Appellant testified and was cross-examined by the 1st Respondent's counsel. The Chief of the area also testified and was cross-examined by the Appellant and the 1st Respondent's counsel.
11. The 1st Respondent adopted the witness statement and a bundle of documents that were on record. In its Judgement, the RRT noted that the Appellant had collected his goods as per the RRT's order and the Inventory Report dated 27th October 2021. The RRT however declined to decide the claim on its merits.
12. According to the RRT, the matter fell outside the jurisdiction of the tribunal because the tribunal does not deal with post tenancy disputes. The case of *Johakim Abayo vs Mokuu Damacline Nyamoita* [2021] eKLR was relied upon.



13. The Appellant was dissatisfied with the decision of the tribunal and filed the current appeal. By an Amended Memorandum of Appeal dated 22nd August 2022, the Appellant is seeking for the following orders:
- a. The ELC Appeal be allowed with statutory and punitive costs, for the BPRT and RRT cases.
 - b. The judgement and decree of the RRT, that was delivered on 28th April 2022, in RRT Case 159 of 2021, be and is hereby set-aside, reversed and declared illegal, unconstitutional and null and void.
 - c. The ELC should find and issue orders that the Appellant is entitled to all the reliefs, injunctions, reprimands, punitive costs, compensation and damages claims for displacement and violation of his property rights, being Kshs. 5,776,600 with several additional compensatory, prohibition and declaratory orders, and with interest from 29th July 2022.
 - d. The ELC upholds and affirms the validity and constitutionality of the Ruling, Orders and Judgement of BPRT, which was dated 14th December 2020 and affirmed that the Appellant's case and merits, falls under the original exclusive Jurisdiction of the Rent Restriction Tribunal.
 - e. The ELC should issue final orders, to declare and prohibit as unconstitutional, illegal, null and void, the outdated, infringing, offensive and contradictory assessment of property Jurisdiction limitations in the *Rent Restriction Act*, and illegal and unconstitutional summons and arrest warrants law found in the *Chief's Act*; since those two provisions, violates and infringes on several millions of Tenants Constitutional and legislative Rights and Freedoms, as was enacted and protected in several substantive laws and regulations; i.e. Articles 27,12,81,31,40,47,150 and *National Police Service Act*, *National Government Co-ordination Act*, *Valuers Act* (3rd Schedule of subsidiary Legislation); Sections 1.1.3, 1.2.2, 3.6.2 (Figures 3.11, 3.12, 3.22) of the National Government's 2012/2013 Housing Survey and Rental Assessment Policies or Valuations, and *Fair Administrative Action Act*.
 - f. The ELC should order, for the mandatory production, discovery and warrants for the certified copies of missing and suppressed Landlord and Tenancy Rental Agreements, Policies, cash receipts, banking statements, the Ministry of Health Covid-19 directives and orders, the illegal arrest summons, public orders and records of their criminal proceedings and list of the sub-chiefs agents, who effected serial No. SB/116/23/9/2019, and binding on the 1st, 2nd, 3rd, 4th Respondents and Interested Party.
 - g. That the ELC Court, also grants mandatory summons and warrants for the submission of defence statements and production of all landlord and Tenants documents, against the absconded 2nd Respondent landlord's management committee official- Jason M. Kaaria, who had signed the illegal petition, for the displacement of my properties and two fraudulent counter-claims, and was adversely mentioned in the Judgement, and acted in collusion with his 3rd, 4th, 5th agents.
 - h. The ELC Superior Court, may also issue any other supplementary decisions, reliefs, injunctions, compensation, and orders, required in the interest of justice and adherence to the *Constitution*, *Judicial Service Commission Code of Conduct and Regulations*, and all other applicable Laws.
14. On 14th December 2022, the 1st, 2nd, 3rd and 5th Respondents filed a notice of preliminary objection stating that no competent Appeal lies before the Court because the Appellant was in breach of Order



- 42 Rule 2 of the [Civil Procedure Rules](#). On 28th September, the Court ordered that the preliminary objection be heard in opposition to the appeal.
15. The appeal was heard by way of written submissions. The Appellant submitted that he was seeking the enforcement of his constitutional rights and fundamental freedoms by the Court and specifically the following rights: equality and freedom from discrimination, human dignity, freedom and security of his person, privacy, access to information and freedom of movement and residence, amongst other rights and fundamental freedoms.
 16. The Appellant submitted that the RRT erred in law and fact when it refused to address the evidence in the inventory report showing that the Respondents had acted unlawfully and that the RRT erred by failing to find that the Sub-Chief acted criminally by intervening in a dispute that was reserved for the RRT.
 17. The Appellant also submitted that the RRT acted in bad faith by reversing the ruling of BPRT and basing its decision on an issue that was not in dispute and that the RRT erred in law and fact by upholding the illegal and incoherent opinions instead of following the [Rent Restriction Act](#), the [Valuers Act](#) and the [Fair Administrative Action Act](#).
 18. The 1st, 2nd, 3rd and 5th Respondents filed their submissions and relied on the cases of [Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd](#). (1969) EA 696, [Speaker of National Assembly vs Njenga Karume](#) [2008] 1KLR 425, [FCS Ltd. vs Odhiambo & 9 Others](#) [1987] KLR 182 and Order 42 Rules (1) and (2) of the [Civil Procedure Rules](#).
 19. The Respondents submitted that the above stated section of the law was stated in mandatory terms and failure to comply with it cannot be termed a mere technicality and that the Memorandum of Appeal does not reveal any concise grounds of appeal but is instead an argumentative narrative against a judicial officer.
 20. Relying on the case of [Apex International & Anglo Leasing Finance Ltd vs Kenya Anti-Corruption Commission](#) [2012] eKLR, the 2nd, 3rd and 5th Respondents submitted that they are not proper parties in the current appeal as they were not parties to the claim before the RRT.
 21. Additionally, it was submitted that the cause of action before the RRT was a landlord-tenant relationship to which they were not privy to.
 22. The Respondents submitted that contrary to the Appellant's claims, the RRT properly evaluated the evidence on record, specifically on the fact that the Appellant collected his goods as per the RRT's orders and that the RRT rightfully found that there was no landlord-tenant relationship by the time the claim was filed before it, the relationship having lapsed in September 2019. The case of [Samson Gwer & 5 Others vs Kenya Medical Research Institute & 3 Others](#) [2020] eKLR was relied upon.
 23. Relying on the cases of [Owners of the Motor Vessel 'Lillian S' vs Caltex Oil \(Kenya\) Ltd](#) [1989] KLR 1 and [Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others](#) [2012] eKLR, the Respondents submitted that where the Court or Tribunal finds that it has no jurisdiction, it should down its tools.
 24. It was submitted that in any case, as per Section 2 of the [Rent Restriction Tribunal](#), the RRT deals with matters where the rent is not more than Kshs. 2,500; that the Appellant was paying a rent of Kshs. 8,000 and that the RRT therefore lacked jurisdiction to hear the claim.

Analysis and Determination

25. Based on the foregoing, the following issues arise for determination.



- i. Whether the preliminary objection has merit.
 - ii. Whether the appeal should be allowed.
26. The definition of a preliminary objection was set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696 as follows:
- “So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”
27. The point of law pleaded in the instant Appeal is that there is no competent appeal before the Court because the purported Appeal offends the requirements of Order 42 Rule 1(2) of the [Civil Procedures Rules](#). The said Rule provides as follows:
- “The Memorandum of Appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.”
28. Having perused the Memorandum of Appeal, I can confirm that the same is verbose and abstruse. The question now then turns to whether such characteristics should render it incompetent and eligible for striking out.
29. The Courts have shied away from doing that, instead opting to glean the issues from long-winded Memorandums of Appeal. In the case of [Robinson Kiplagat Tuwei vs Felix Kipchoge Limo Langat](#) [2020] eKLR, the Court of Appeal stated as follows concerning Rule 86 of the [Court of Appeal Rules](#) (which is similar to Order 42 Rule 1(2)):
- “We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the [Court of Appeal Rules](#). That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal.
- This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See [Abdi Ali Dere v. Firoz Hussein Tundal & 2 Others](#) [2013] eKLR) and [Nasri Ibrahim v. IEBC & 2 Others](#) [2018] eKLR. In the latter case, this Court lamented:
- “We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs.”



31. Before setting out the three grounds of appeal gleaned from the Memorandum of Appeal, it is important to highlight some dynamics of appeals before this Court. Firstly, it is important to note that the appeal should be restricted to matters that were before the RRT, and the decision thereof.
32. This Court will therefore not deal with prayers (e), (f) and (g) of the Memorandum of Appeal as the same deal with matters that were not before the RRT. The court will also not address any matters related to violation of the Appellant’s fundamental freedoms or the Constitutionality of various provisions of law because they were not in issue in the RRT.
33. Secondly, this being a Court of first appeal, it has a distinct role. That role was restated as follows in the case of *Bwire vs Wayo & Sailoki* (Civil Appeal 032 of 2021) [2022] KEHC 7 (KLR) (24 January 2022) (Judgment):
- “A first appellate is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. (See *Selle & another v Associated Motor Boat Co. Ltd. & others*).”
34. The first ground of appeal that this court will deal with is whether RRT erred in failing to reprimand the Chief for interfering in a dispute that was reserved for the RRT. The RRT in its judgement noted as follows:
- “Prior to filing the matter before the BPRT, the Plaintiff had complained to the Public Service Commission and the Permanent Secretary, Ministry of Interior as well as the Commission on Administrative Justice (Ombudsman) with the later finding no fault with the Chief’s conduct via a letter dated 21st September 2020.”
35. As per the evidence on record, the Chief testified that he summoned the Appellant to his office on 23rd September 2019; that they discussed the Appellant’s undertaking to pay the money owed to the 1st Respondent and that no decision was made during the meeting.
36. The record shows that at the time the Appellant was summoned by the Chief, there was no active dispute at the RRT between him and the 1st Respondent. He cannot therefore claim that the RRT erred in failing to reprimand the Chief for interfering in a dispute reserved for the RRT.
37. In any event, the law, and specifically Article 159 (2) (c) of the *Constitution* allows the judiciary to promote alternative justice system, meaning that the Chief could still attempt to resolve the dispute notwithstanding that the matter was before the Tribunal.
38. The second ground is whether the RRT failed to address the evidence presented to it in the inventory report. The RRT noted as follows in its judgement.
- “That due to challenges associated with Covid-19 and recommended action by the Ministry of Health, the hostel was shut down for renovations since September 2019. The Plaintiff has since collected his household goods pursuant to Tribunal orders as per the Inventory report dated 27th October 2021.”



39. As per the report on record, the Appellant accompanied an officer of the RRT to the 1st Respondent's premises. The 1st Respondent's employees released the Appellant's goods to him and the officer took an inventory of the same.
40. The Appellant did not elaborate what evidence in the inventory report the RRT failed to address. His claim that the RRT failed to address the evidence in the report therefore fails.
41. The third and final issue is whether the judgement of the RRT should be set aside for having dealt with extraneous matters. The Respondents argued that the RRT rightfully downed its tools after finding that it did not have jurisdiction because there was no subsisting landlord-tenant relationship.
42. The preamble to the *Rent Restriction Act* states as follows:
- “An Act of Parliament to make provision for restricting the increase of rent, the right to possession and the exaction of premiums, and for fixing standard rents, in relation to dwelling-houses, and for other purposes incidental to or connected with the relationship of landlord and tenant of a dwelling-house.”
43. From the foregoing, it is clear that the RRT derives its power to make decisions from the *Rent Restriction Act*. It is also clear that the *Rent Restriction Act* applies to a relationship between a landlord and tenant. In the absence of such a relationship, the RRT has no power to act.
44. During cross-examination by the defence counsel, the Appellant stated that he had been a tenant of the 1st Respondent from January 2013 until September 2019. Further, as per the Supporting Affidavit dated 19th February 2021, and which forms part of the Appellant's documents, the Appellant admits that from around 26th September 2019, he was not living within the 1st Respondent's premises.
45. Since the impugned claim before the RRT was filed on 19th February 2021, the logical conclusion is that there was no subsisting landlord-tenant relationship at the time it was filed. The provisions of the *Rent Restriction Act* and the authority of the Rent Restriction Tribunal were therefore ousted.
46. In the celebrated case of *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* [1989] eKLR, the Court stated as follows:
- “Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a confirmation of proceedings pending other evidence. A court of law must down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
47. The upshot of the foregoing is that the RRT acted in accordance with the law by not giving a judgement on merits in a case where it did not have jurisdiction. Its jurisdiction had clearly been ousted by the absence of a landlord-tenant relationship. Further, the rent payable being Ksh. 8,000, the jurisdiction of RRT was ousted. This is so because the pecuniary jurisdiction of RRT is Kshs. 2,500. Consequently, the Appellant's claim that the RRT erred by considering extraneous factors fails.
48. In view of the foregoing, none of the Appellant's claims have merit. The appeal is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 11TH DAY OF APRIL, 2024.



O. A. ANGOTE

JUDGE

In the presence of;

Toluwalase Amondi the Appellant in person

Mr. Gicheru for 3rd, 2nd 1st and 5th Respondents

Court Assistant: Tracy

