



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MUSINGA, GATEMBU & MURGOR, J.J.A.)

CIVIL APPEAL NO.66 OF 2012

BETWEEN

ANDREW O. NYANGWESO.....APPELLANT

AND

ALLOYCE BARASA.....1ST RESPONDENT

OYE ASHIOYA T/A ASHIOYA & CO. ADVOCATES.....2ND RESPONDENT

ALICE AMINDE AMINDEAYUKU.....3RD RESPONDENT

(Appeal arising from the Judgment of the High Court of Kenya at Busia (Muchemi, J.) dated 29th February, 2012

in

HCCA NO. 39 OF 2010)

JUDGMENT OF THE COURT

INTRODUCTION

1. This appeal arises from the judgment of Muchemi, J. dated 29th February, 2012 where the learned judge declined to set aside a ruling by the Busia Resident Magistrate's Court delivered on 14th July, 2010 in Miscellaneous Application No. 2 of 2010. The appellant was aggrieved by that decision and filed a second appeal to this Court.

BACKGROUND

2. On 8th January, 2010 the appellant filed a suit before the Rent Restriction Tribunal (RRT) seeking an order to stop illegal proclamation of his household goods in distress for rent by the respondents.

3. The orders sought were granted *ex parte*, pending inter partes hearing and determination of the suit, which was to take place during the tribunal's next session at Kakamega. The appellant then filed Miscellaneous Application No. 1 of 2010 in the Principal Magistrate's Court at Busia, seeking adoption of the orders granted by the Rent Restriction Tribunal as an order of the court. During the pendency of that application, the respondents seized the appellant's goods.

4. The appellant then filed another application before the Principal Magistrate's Court seeking to restrain the respondents from selling the seized properties. He also urged the court to consolidate both the Rent Restriction Civil matter and the application that was before the court.

5. In rejecting the substantive application for adoption of the tribunal's orders, the learned Magistrate delivered himself as hereunder:-

“Adoption of orders from the Rent Restriction Tribunal is governed by section 31 of the Rent Restriction Act Cap 296 of the Laws of Kenya. Section 31(1) provides for a condition precedent to adoption, that is, a party who had filed a copy of any order or

determination of the tribunal prior to adoption. There is no evidence on record that the requisite notice as provided under section 31(1) aforesaid was given by the applicant to the tribunal. This being the case, the application for adoption is incompetent for want of prior notice as provided under the aforesaid provisions.

It was also argued for the 3rd respondent that the orders sought to be adopted indicates that the tribunal matter is still pending and hence there can be no adoption before final orders are made. A perusal of the said order shows they were granted ex parte, and among the orders thereto issued was that the respondents be served for inter partes hearing during the next session at Kakamega. There is no indication on record that such interpartes hearing has taken place.

In the circumstances I find the prayer for adoption herein is premature and ought not to be allowed at this stage.”

6. The court further held that it had no jurisdiction to hear Rent Tribunal matters and thus declined the prayer for consolidation of the two matters.

7. Being aggrieved by the said decision, the appellant preferred an appeal to the High Court of Kenya at Busia. Muchemi, J. dismissed the appeal.

APPEAL BEFORE THIS COURT

8. In his memorandum of appeal, the appellant raised several grounds of appeal, among them that, the learned judge erred in law in her interpretation of **section 31(1)** of the **Rent Restriction Act**; and in holding that the exparte order granted by the tribunal was meant to last for 14 days and could therefore not be enforced by the court since it had expired.

9. When the appeal came up for hearing, the appellant, who was unrepresented, relied on his written submissions, which he briefly highlighted. It is not necessary to summarise the prolix submissions, suffice it to say that the appellant faulted the judge for the manner in which she interpreted **section 31(1)** of the **Rent Restriction Act**.

10. On the other hand, **Miss Wanjala**, learned counsel for the respondents, supported the High Court judgment, and in particular the learned judge’s interpretation of the aforesaid section of the law. She contended that the appellant did not follow the right procedure in his attempt to have the Magistrate’s Court adopt the exparte orders granted by the tribunal. She urged the court to dismiss the appeal.

ANALYSIS AND DETERMINATION

11. We shall commence our determination of this appeal by considering the provisions of **section 31** of the **Rent Restriction Act**; which states as follows:-

“31(1) A copy of any determination or order of a tribunal, certified by the chairman of the tribunal or by a public officer authorized by the Minister by notice in the Gazette to certify such copies, to be a true copy, may be filed in a court by any party to the proceedings which gave rise to it, and thereafter, if notice in writing of the filing has been given to the tribunal by the party filing it, the determination or order may be enforced as a decree of the court.

(2) where a determination or order has been filed and served on a tribunal under subsection (1), the tribunal shall transmit to the court its record of the proceedings, and the record shall be filed by the court with the certified copy of the determination or order.”

12. In her interpretation of the above quoted section of the law, the learned judge held;

“It is the requirement of the law that the appellant served the notice on the Tribunal when he applied for adoption of the order. Once the notice is filed the tribunal forwards its record to the court. This provision is meant to guard against forging of the tribunal orders. The Magistrate herein would not have obtained the record [from] the tribunal without the appellant having given notice to the tribunal. The appellant failed to comply with this important legal requirement. The magistrate was correct in finding that the appellant could not enjoy a remedy under the law when he had failed to comply with the provisions of that law.”

13. We think that the learned judge was right in her interpretation of **section 31** of the **Rent Restriction Act**. The appellant did not give any written notice to the tribunal as required and therefore the Magistrate’s Court could not enforce the tribunal’s order. Whether the order issued by the tribunal had expired or not was immaterial, as the Magistrate’s court could not enforce it due to the appellant’s failure to comply with the prescribed enforcement procedure. It would be superfluous for us to consider all the other grounds of appeal, as they all stem from the learned Magistrate’s ruling declining to enforce the order of the tribunal.

14. In the end, we find this appeal lacking merit and dismiss it with costs to the respondents.

Dated and Delivered at Kisumu this 20th day of July, 2017.

D.K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR