



Cajetan Ombere t/a Welco Services International & 2 others v Ndirangu (Environment and Land Appeal E049 of 2023) [2024] KEELC 6371 (KLR) (26 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6371 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E049 OF 2023
LN MBUGUA, J
SEPTEMBER 26, 2024**

BETWEEN

**CAJETAN OMBERE T/A WELCO SERVICES INTERNATIONAL 1ST
APPELLANT**

LITTLE NINEYARDS AUCTIONEERS 2ND APPELLANT

MUITA CHACHA 3RD APPELLANT

AND

NEESAY MUTHONI NDIRANGU RESPONDENT

JUDGMENT

1. This interlocutory appeal was instituted by the 1st appellant vide the memorandum of appeal dated 16.5.2023. It was triggered by the ruling and order of the chairman of the Rent Restriction Tribunal, Mr. Hillary Korir dated 20.4.2023 issued in Nairobi Rent Restriction Tribunal Case No. E021 of 22, Neesay Muthoni Ndirangu v Cajetan Ombere t/a as Welco services International, Little Vineyards Auctioneers & Muita Chacha in which the Tribunal dismissed the 1st appellant’s application dated 3.8.2022.
2. The 1st appellant had sought a release of the sum of ksh. 153, 678/= deposited in the Tribunal’s account vide its orders of 9.5.2022 as well as a prayer to strike out the plaint therein on the basis that it was not signed. In the ruling delivered on 20.4.2023, the application dated 3.8.2022 was dismissed.
3. The appeal raises 9 grounds of appeal summarized as follows;

That the learned chairman of the Rent Restriction Tribunal erred in failing to consider that the plaint as filed was unsigned and therefore defective. (II) That the learned chairman erred in failing to consider that the respondent’s rent of ksh.47,000/= per month was beyond the Tribunal’s jurisdiction, and that the respondent was in rent arrears and she was not paying



rent (I11) That the learned chairman erred in failing to consider and hear the preliminary objection dated 25.5.2022.

4. The 1st Appellant seeks the following orders;
 - a. That the appeal be allowed.
 - b. That the ruling and order of the Chairman of the Rent Restriction Tribunal Hon. Hillary Korir dated 20.4.2023 and its finding be set aside and a fresh hearing of the Notice of Motion dated 3.8.2022 be ordered.
 - c. That this Honourable court do issue a permanent injunction restraining the Chairman of the Rent Restriction Tribunal Hon. Hillary Korir and any other officer of the Rent Restriction Tribunal from presiding, conduction, dealing and or hearing case No. E021 of 2022.
 - d. That this court finds that the chairman of the Rent Restriction Tribunal Hon. Hilary Korir lacks jurisdiction to hear case No. E021 of 2022.
 - e. That this Honourable court orders that case Number E021 of 2022 be transferred from the Rent Restriction Tribunal to a court of competent jurisdiction to hear it.
 - f. That costs of the suit, the application and the appeal be borne by the Respondent.
 - g. Any other order the honourable court may find fit to grant in application of the law.
5. The Appeal was heard by way of written submissions. The submissions of the 1st appellant are dated 7.5 2024 where he argues that the respondent filed an unsigned plaint dated 10.1.2022 against the requirements of Order 2 Rule 16 of the Civil Procedure Rules, thus the said pleadings are defective.
6. It is argued that unsigned pleadings cannot be cured under Section 15 (1) of the *Civil Procedure Act* or Article 159 (1) of *the Constitution* as interpreted by the Tribunal. He also avers that the jurisdiction of the tribunal ought to have been determined at the threshold stage, thus the Tribunal erred by ignoring his Preliminary Objection dated 25.3.2022, since the tenancy agreement was for ksh.47,000/=, which is beyond the Tribunal's jurisdiction under the *Rent Restriction Act*. The tribunal ought not to have taken any more steps outside its jurisdiction. In that regard, the case of Owners of Motor Vessel Lilian "s" v Caltex Oil (Kenya) Ltd [1989] eKLR well as Samuel Kamau Macharia & Another vs. KCB & Others were cited.
7. It is submitted that the chairman of the Rent Restriction Tribunal acted unlawfully by refusing to release the sum of ksh. 153,578/= deposited in the Tribunal's bank account to the 1st Appellant given the Respondent had not been paying rent for January - April 2022, yet the Tribunal allowed her to vacate with all her goods thus assisting her to steal a match.
8. The Respondent's submissions are dated 4.7.2024 admitting that her plaint dated 10.1.2022 was not signed, but she explained to the tribunal that the oversight was occasioned by the fact that she was acting in person. That under Order 4 Rules 1 (6) of the Civil Procedure Rules, the Tribunal had discretion whether to admit the plaint or not which discretion was exercised in her favour.
9. It is also argued that the substantive matter before the tribunal is yet to be heard, thus the tribunal had a duty to take into account the overriding objectives under Section 1A and 1B of the *Civil Procedure Act* and that striking out suits is not encouraged as it is a draconian exercise. The court is urged to be guided by Article 159 (2) of *the Constitution*. The case of DT Dobie & Company (KE) Ltd v Joseph Mbaria Muchina & Another [1980] KLR as well as the case of Trust Bank Ltd v Amalo Co. Ltd [2002] eKLR are relied upon.



10. On the issue of jurisdiction, the respondent relies on the case of James Kirugi v Chairman Rent Restriction Tribunal and Another [2020] eKLR to submit that it is time the Rent Restriction Act was amended as it was formulated in 1981 and rents have shot up. The respondent also argues that if the tribunal lacks jurisdiction, then all its orders are null and void and the appellants should not purport to benefit from its orders by seeking ksh.153,578/= deposited in the tribunal.

Determination

11. Having regard to all the arguments raised herein, I find that the issues for determination are those summarized in the grounds of appeal relating to status of an unsigned plaint, jurisdiction, the preliminary objection and the monies deposited with the tribunal.

An unsigned plaint

12. The respondent admits that her plaint was unsigned. In the impugned ruling of 20.4.2023, the tribunal stated that;

“ Article 159(1) enjoins the tribunal to administer justice without undue regard to procedural technicalities and places heavy premium on substantive justice.”

13. In the case of Alexander Khamasi Mulimi v Independent Electoral and Boundaries Commission & 2 Others [2018] eKLR, the court dealt at length on the question of substantive justice vis a vis the rules of procedure and stated that;

“ The court could only dismiss a case for non-conformity with the rules when the infraction complained of has caused prejudice to the other party”.

14. The 1st appellant has not indicated what prejudice was occasioned to him in light of the infraction on the side of the respondent. If anything, the 1st appellant himself has constantly failed to comply with the rules on filing the Record of Appeal as set out under Order 42 Rule 13 of the Civil Procedure Rules. It took him more than one year to file a proper complete record of appeal which was filed in the CTS on 5.8.2024, despite the constant indulgence by the court, even necessitating a physical court appearance at some point to resolve the issue of the incomplete record! This court could have struck off the appeal on account of there being no proper record, but the court didn't. What is good for the goose is good for the gadder, so goes a saying. Thus in the case at hand, I find no fault in the findings of the tribunal in failing to strike out the plaint.

Jurisdiction and the Preliminary Objection

15. The jurisdiction of the Rent Restriction Tribunal has been contested by the appellant. It is well settled law that jurisdiction is everything and without it a court ought to down its tools in tandem with the holding in Owners of Motor Vessel Lilian “s” v Caltex Oil (Kenya) ltd [1989] eKLR. The question I pose is; Which court downs its tools? It is certainly the one seized of the matter.
16. I have perused the entire application dated 3.8.2022 and no where was the issue of jurisdiction and the preliminary objection made a subject of contest before the trial court. Even in his submissions before the tribunal, the issues framed by the appellant were;

“i. Whether or not the plaintiff paid her due rent in strict compliance to the terms of the tenancy agreement?”



- ii. Whether or not the plaintiff served upon the 1st defendant notice to terminate the tenancy agreement as agreed in the tenancy agreement?
 - ii. Whether or not the plaintiff's plaint is properly before the tribunal?
 - ii. Whether or not the amount of rent deposited in the Tribunal account can be released to the Landlord?
 - ii. Whether the plaintiff would suffer prejudice should the rent deposited in the Tribunal's account is released to the landlord?
17. What more, even the pleadings of the appellant before the Tribunal (defence and counterclaim) are silent on the question of jurisdiction.
18. In the case of *Kiplangat Korir V Dennis Kipngeno Mutai* [2006] eKLR, the court had this to say on the issue of jurisdiction being raised in the appeal.

“In this case, the appellant has raised the issue of jurisdiction so much later in the day. Substantial Justice frowns upon a party who invokes provisions of the law unduly and at a later stage of a proceeding to take undue advantage against an opponent. In any event, this court would be placed in an awkward situation were it to uphold the argument of the appellant where it is being called upon to decide on an issue which is raised for the first time on appeal. If this court were to make a determination on the issue of jurisdiction on this appeal as urged by the appellant, this court would not be sitting on appeal but be acting as a court of the first instance. This is because the issue of jurisdiction was not raised before the trial resident magistrate's court. I say no more on that score. I will disallow the grounds of appeal on jurisdiction”.

19. Similarly, this court proceeds to dismiss the grounds of appeal relating to jurisdiction and the preliminary objection as the two questions were not made a subject of contest for determination before the tribunal in the course of the prosecution of the application dated 3.8.2022. Thus the appeal fails on these two grounds.

Release of Monies Deposited in the Tribunal

20. On failure by the tribunal to order the release of the monies deposited in that tribunal, I find that this is an interlocutory appeal. The appellant has not demonstrated that he made efforts to have the matter fast tracked for the Tribunal to give its conclusive findings on the matter. In that regard, I find that this ground too is unmerited.
21. In the end, I proceed to give the following orders;
 1. This appeal has no merits and the same is hereby dismissed.
 2. The original file is remitted back to the tribunal for determination.
 3. Any interim orders given herein are hereby discharged.
 4. On costs, I take cognizance of the fact that the dispute between the parties is yet to be resolved. On that account, I direct that each party shall bear their own costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.



LUCY N. MBUGUA

JUDGE

In the presence of:-

Cajetan Ombere The Appellant

Kiplagat for Defendant

Court assistant: Joan

