



Prime Spot Enterprises Limited v Akoth (Environment and Land Appeal E048 of 2023) [2024] KEELC 7395 (KLR) (31 October 2024) (Judgment)

Neutral citation: [2024] KEELC 7395 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E048 OF 2023
MD MWANGI, J
OCTOBER 31, 2024**

BETWEEN

PRIME SPOT ENTERPRISES LIMITED APPELLANT

AND

IRENE AKOTH RESPONDENT

JUDGMENT

1. The Tenant/Respondent herein approached the Business Premises Tribunal (BPRT) by way of a Complaint dated 5th May, 2023 under Section 12 (4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301 Laws of Kenya, claiming that the Landlord intended to terminate her tenancy without following the due process. She also complained that the Landlord was damaging her property with an intention to frustrate her and force her out of the suit premises.
2. Alongside the Complaint, the Tenant/Respondent filed an application of even date seeking injunctive orders to restrain the Landlord/Appellant from unlawfully, illegally or arbitrarily evicting her from the suit property and or damaging or doing anything that could affect her tenancy.
3. The Tribunal heard the application and delivered its ruling on 2nd November, 2023 noting that the Landlord had admitted interfering with the Tenant's use of the suit premises by uprooting water pipes, removing water storage tanks and disconnecting water supply to the business premises. The Tribunal found that this was done without any court order. The Tribunal's position was that the Landlord ought to have moved it to obtain orders to stop the acts complained of. Consequently, the Tribunal issued the injunctive orders sought against the Landlord/Appellant.
4. The Tribunal further allowed the complaint and declared the Landlord's notice of termination of tenancy dated 10th April, 2023 invalid thereby setting it aside. Further, the Tenant/Respondent was granted costs of Kshs. 50,000/= against the Landlord/Appellant herein to be offset from the rent account.



5. The Landlord/Appellant, being aggrieved by the decision of the Business Premises Rent Tribunal preferred the instant appeal to this court.
6. The Appeal was canvassed by way of written submissions. The Landlord/Appellant's submissions are dated 24th April, 2024 whereas the Tenant/Respondent's submissions are dated 10th July, 2024. The court has had a chance to read through the said submissions.

Issues for determination

7. Having considered the appeal and the submissions filed by the parties herein and also having perused the pleadings filed before the Tribunal and the impugned ruling, my finding is that there is a critical issue for determination that goes into the jurisdiction of this court. The ruling of the tribunal appealed from begins with the statement that, "...the tenant approached this tribunal by way of a complaint...".
8. The issue then for determination is whether an appeal lies to this court against a decision made by the Tribunal in a Complaint under the provisions of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301 Laws of Kenya.

Analysis and determination

9. The law is well settled on the duty of the 1st Appellate court. As stated in the case of *Selle & another - vs- Associated Motor Boat Co. Ltd & others* (1968) E.A 123;

“... this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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.”
10. In any litigation, jurisdiction is central. Be it in a first trial or a retrial, the court must satisfy itself that it has the requisite jurisdiction.
11. A court of law cannot validly take any step without jurisdiction. See the Supreme Court's decision in the *Matter of Interim Independent Electoral Commission* [2011] eKLR. Jurisdiction is so fundamental that it does not have to be raised by any party. The court may as well pick it out on its own motion and at any stage of the proceedings.
12. There is a litany of decisions where the established view is that the right of appeal in respect to matters brought before the Tribunal is restricted only to “References” under Section 15(1) of the Act, and not “complaints” under Section 12(4).
13. In the case of *Gatanga General Stores & 2 Others vs Githere* (1988) eKLR, the Court of Appeal distinguished between a Complaint and a Reference in the following words;

“It appears that there might be three sources of appeal. The primary source lies in Section 15(1) of the Act. Any party to a reference aggrieved by a determination or order of a tribunal made in the reference may appeal to the High Court within the time stated. Hence this appeal concerns decision on a reference. Such an appeal depends upon two steps, the giving of the tenancy notice by the landlord and the reference by the tenant to the tribunal against the landlord's notice.



A second source of aggravation stems from a complaint under section 12(4) of the Act. This is not an easy concept to follow at every stage. Madan, J in *Choitram v Mystery Model Hair Saloon*, [1972] EA 525, (followed in *Machenje v Kibarabara*, [1973] EA 481) explained the scope of a complaint in these words:

“The powers given in section 12(4) are expressly in addition to any other powers specifically conferred. I am of opinion however that the term “complaints” is intended to cover only complaints of a minor character.”

“The term ‘investigate’ does not necessarily imply a hearing. Such complaints would include complaints by the tenant of turning off of water, obstruction of access, and other acts of harassment by the landlord calling for appropriate orders for their rectification or cessation, but not including payment of compensation for any injury suffered.”.....

14. Section 15(1) of the Act gives the right of appeal to an aggrieved party in a reference, to lodge an appeal before this court. The term “Reference” is defined in Section 6 which restricted it to a “tenancy notice” issued under Section 4 of the Act in respect of a controlled tenancy.
15. As early as 1979, Simpson, J (as he then was) in the case of *Re Hebtulla Properties Ltd* (1979) KLR 96 held as follows:
 1. The right of appeal to the High Court (conferred by section 15(1) from an order or determination of a tribunal on a reference to it does not extend to an order of the tribunal made on a complaint.
 2. The jurisdiction of the tribunal to hear complaints under Section 12 (4) is restricted to minor matters.
16. Simpson, J stated in that case that he had derived comfort from earlier decisions, and more particularly the one by Madan, J (as he then was) in *Pritam vs Ratilal* (1972) EA 560, in which the learned judge held that Section 12(4) did not entitle the Tribunal to make an order for eviction and envisaged complaints other than eviction such as a landlord turning off a common water tap.
17. In the case of *Choitram vs Mystery Model Hair Saloon* (1972) E. A. 525, the court stated that;

“..... the term “complaint” is intended only to cover complaints of a minor character. The term “investigate” does not necessarily imply a bearing. Such complaints would include complaints by the tenant of the turning off of water, obstruction of access and other acts of harassment by the landlord, calling for appropriate orders for their rectification or cessation but not including payment of compensation for any injury suffered.”
18. Justice Oguttu Mboya in *Mike Muli -vs- Justus Mwandikula Kilonzo & 4 others* [2022] eKLR, found that the right of appeal under section 15 of the Act, is only available to parties to a Reference who are aggrieved by a determination or order arising therefrom. He cited with approval the decision in the case of *Re-Heptulla Properties Ltd* [1979] eKLR where the Court had made a similar finding.
19. In the case of *Gilas Yimbo t/a Woodvale Associates -vs- Eldomart Holdings Ltd* [2008] eKLR, Visram J (as he then was) stated that:

“On my part, I will stick to the conventional wisdom and hold that if the legislature had intended a right of appeal from decisions of the Tribunal in respect to Complaints made



under Section 12(4) of the Act, it would have said so clearly and would not have amended the Act, as it did in 1970.”

20. I fully agree with the reasoning of my brother Judge Oguttu on the interpretation of Section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301 Laws of Kenya. The conclusion is that there is indeed no right of appeal from the ruling of the Tribunal which arising from a decision made in a “complaint” filed before the Tribunal under Section 12(4) of the Act.
21. Accordingly, I find that this appeal is incompetent as it arose from a decision made by the Tribunal in respect to a Complaint under section 12(4) of the Act. The appeal is hereby struck out with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF OCTOBER 2024

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Nyakundi h/b for Mr. Koceyo for the Appellant

Mr. Kiptoon for the Respondent

Court Assistant: Yvette

M.D. MWANGI

JUDGE

