



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Gakuru (Land Case Appeal E014 of 2024)
[2024] KEELC 7330 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7330 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
LAND CASE APPEAL E014 OF 2024**

AK BOR, J

OCTOBER 29, 2024

BETWEEN

MONICAH NJERI CHEGE APPELLANT

AND

JANE WANJA GAKURU RESPONDENT

RULING

1. Through the application dated 22/8/2024, the Appellant seeks to be allowed to take back possession of the half undivided commercial and residential share in land reference number (L.R No.) 6585/216 (the suit property) that she was occupying prior to her eviction on 29/7/2024 pending hearing and determination of the appeal against the decision of the Business Premises Rent Tribunal (BPRT).
2. The application was made on the grounds that the Respondent instituted BPRT Case No. E036 of 2024 but deliberately failed to serve the reference and application dated 8/3/2024 and proceeded to obtain ex parte eviction orders against the Appellant on 25/3/2024. That the Appellant only became aware of the existence of BPRT No. E036 of 2024 when the eviction orders were executed on 29/7/2024. The Appellant claimed that she was condemned unheard and that she had been in possession of the suit premises for over 34 years as a matter of right because her late husband, John Chege Kiuru was a bona fide purchaser for value of half undivided share in L.R No. 6585/216 pursuant to the sale agreement dated 12/11/1990. The Appellant asserted that from 12/11/1990 the relationship of landlord-tenant between the parties or between the Respondent and the late John Chege Kiuru ceased to exist and therefore the Tribunal lacked jurisdiction to issue the orders of 25/3/2024. The Appellant added that she had been exposed to loss and damage as she did not have any place to do business and reside after she was evicted from a place she had known as home for over 34 years
3. The Appellant swore the affidavit in support of the application and averred that the suit property was initially owned by Erasto Gakuru Njunji who had married two wives, Elizabeth Wairimu Gakuru and



- Leah Wanjiru Gakuru. That upon his death, his two widows became the joint beneficial owners of the suit property. Vide the sale agreement dated 12/11/1990, the widows sold half of the undivided share in the said parcel of land to her late husband. She exhibited copies of the sale agreement and the cheques paid. She added that prior to execution of the sale agreement dated 12/11/1990, her husband and his family including her were occupying half of the suit property as tenants and once he entered into the sale agreement, the tenant relationship came to an end and the Appellant and her late husband were obligated to pay land rates. She produced copies of land rates dated 27/3/2018 and the receipt dated 29/3/2021 issued by the County Government of Laikipia with respect to the suit property.
4. Upon the death of Erasto G. Njunji, his family members applied for administration and in the certificate of confirmation of grant dated 28/11/2019, the suit property was distributed without taking into account the fact that half undivided share was not available for distribution in the estate since it had been sold to George Chege Kiuru. She annexed a copy of the certificate of confirmation of grant.
 5. Through the letter dated 22/9/2023, Mrs. Chege instructed her advocates to respond to the Notice to Terminate the Tenancy and inform the Respondent that her occupation of the half-undivided commercial and residential premise on the suit property was on the basis of being a beneficial owner and not as a tenant. She maintained that the Respondent was aware about her interest in half-undivided commercial and residential share of L.R No. 6585/216 and that the Tribunal lacked jurisdiction to handle the issue since there was no landlord tenant relationship. Mrs. Chege was emphatic that the Tribunal did not have jurisdiction to deal with the relationship between the parties because the matter related to ownership of the land and the enjoyment of proprietorship interest appurtenant to such ownership. She maintained that BPRT Ref No. E036 of 2024 and the application dated 8/3/2024 were not served on her and that she only became aware of the case when she was forcefully evicted from the suit property on 29/7/2024.
 6. Regarding her response to the Notice to Terminate, she asserted that her response gave sufficient reasons why she did not need to file a reference. She added that she had been operating a shop and residing on the half undivided commercial and residential share in the suit property and that her eviction from the land where she had lived as a matter of right for over 34 years had exposed her to loss and damage unlike the Respondent who would not suffer any loss and damage if the Appellant were allowed back into the premises.
 7. She averred that through the application dated 31/7/2024, she applied to the BPRT to set aside the orders of 25/3/2024 and to be allowed to reoccupy the premises. On 15/8/2024 the BPRT dismissed her application on the ground that it lacked jurisdiction since the landlord-tenant relationship was terminated on 29/8/2024 following which she filed this appeal. She annexed a copy of the memorandum of appeal together with the Notice to Terminate Tenancy dated 19/9/2023. The ground for termination was indicated as failure to pay rent as and when it fell due and payable for over two months.
 8. The Respondent opposed the application and averred that she was the landlord of the premises. She stated that the notice to terminate the tenancy dated 19/9/2023 was served on the Appellant. That she responded through the letter dated 22/9/2023 opposing the termination notice but did not file any reference as required by law. Further, that the Respondent filed an application for eviction and served the Appellant who failed to respond. The application was heard and the eviction orders granted against the Appellant. The eviction orders were executed by M/s Tango Auctioneers and the Appellant was evicted from the suit property. Being aggrieved by the eviction orders, the Appellant filed the application dated 31/7/2023 which was dismissed for non-appearance. She added that the appeal was an afterthought and that the suit property had already been rented to a third party. She added that no adverse orders should be issued against the third party in occupation as it would occasion substantive



- loss and a miscarriage of justice. She annexed a copy of the landlord's notice to terminate tenancy and the affidavit of service sworn on 19/9/2023 in respect of the landlord's notice. She also annexed a copy of the affidavit of service sworn on 14/3/2024 in respect of service of the notice of motion dated 14/3/2024. She also attached copies of the cause list and the application dated 31/7/2024.
9. The court directed parties to file written submissions on the application. The Appellant submitted that she had been condemned unheard and that her eviction from the suit property had rendered her homeless and she was being supported by well-wishers. Further, that she had been operating a shop and residing on the half undivided commercial and residential premises which she had occupied for over 34 years. She added that she would continue to suffer if possession were not handed back to her. She maintained that the BPRT lacked the jurisdiction to hear and determine the issue between the parties. She explained that the BPRT dismissed her application on the ground that it lacked jurisdiction after the landlord-tenant relationship was terminated. She was emphatic that the Respondent was aware and had not disputed the fact that she had resided on the suit property for over 34 years. Further, that the existence of the sale transaction over the suit property involving her late husband was also not disputed by the Respondent.
 10. The Respondent submitted that under Section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, a party to a reference aggrieved by a determination or order of the Tribunal may appeal to the Environment and Land Court (ELC) within 30 days of the order or determination. She added that Section 15 only applied where person was a party to a reference under Section 6 of that Act and pointed out that the Appellant did not file any reference and could not therefore be said to be a proper party to lodge an appeal pursuant to Section 6. She also relied on Section 10 of the Act which provides that where a landlord had served a notice on the tenant and the tenant failed to notify the landlord within the appropriate time of his unwillingness to comply with the notice, the notice would have effect from the date specified. The Respondent also relied on Section 12 (4) of the Act and maintained that the Appellant lacked a right of appeal. The Respondent relied on *Gifted Hands School Limited v Mogul & Another (ELC Case Civil Suit 047 of 2022)* [2022] KEELR 2770 (KLR) (7July 2022) (Judgment) where the court dealt with the issue of its jurisdiction to entertain an appeal against an order of the tribunal made pursuant to Section 12 (4) of the Act. The court found that it lacked jurisdiction to deal with the appeal before it and proceeded to strike it out.
 11. The issue for determination is whether the court should grant the orders sought in the application dated 22/8/2024 and order the restoration of the Appellant to the suit property.
 12. The notice and proceedings pursuant to which the Appellant was evicted from the suit property were issued and conducted pursuant to the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. This is an Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for connected matters. The Appellant's contention is that she was not occupying the suit property as a tenant but as the beneficial owner of the property which her late husband purchased from the original owner and that the BPRT lacked jurisdiction to handle the matter and to issue the orders it did. The Respondent did not refute these contentions. These are some of the issues that fall for determination in the substantive appeal including the issue as to whether an appeal lies to this court against the decision of the BPRT under Sections 6, 12 and 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
 13. The BPRT declined to deal with the application dated 31/7/2023 on the ground that it lacked jurisdiction since the landlord-tenant relationship was terminated on 29/8/2024. Appeals against decisions of the BPRT lie to this court in accordance with the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. Based on the contention that the BPRT did not have jurisdiction to deal



with the Respondent's claim because the Appellant did not occupy the suit property as a tenant of the Respondent but in her right after her late husband purchased half undivided share in the suit premises, this is the proper court to determine whether the BPRT was seized of jurisdiction to determine the Respondent's claim based on tenancy and whether the Appellant was a tenant of the Respondent.

14. The Appellant claimed that she had been rendered homeless after she was evicted from the suit property which she had occupied for more than thirty years. The Respondent opposed the application while urging that it would occasion substantive loss and a miscarriage of justice to the third party in the suit property if he were to be made to move out of the premises. Weighing this contention against the orders sought by the Applicant to be reinstated in the suit premises which she had occupied for over 34 years as a home and as business premises, it would be in the interest of justice to restore the Applicant to the suit property pending hearing and determination of her appeal challenging the decision of the BPRT.
15. The court allows the Appellant to take back possession of the half undivided commercial and residential premise on L.R No. 6585/216 that she was occupying prior to her eviction on 29/7/2024 within 3 days of today.

The costs of the application will be in the appeal.

DELIVERED VIRTUALLY AT NANYUKI THIS 29TH DAY OF OCTOBER 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Nderitu Komu for the Appellant

Mr. David Mbugua for the Respondent

