Case Number:	civ app 277 of 93
Date Delivered:	24 Jul 2003
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	-
Judge:	n/a
Citation:	SALOME WANGARI RUGOIYO T/A WAKINA ENTERPRISES vs BENSON MBATIA MWANGI[2003] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 277 OF 1993

SALOME WANGARI RUGOIYO

t/a WAKINA ENTERPRISES ……APPELLANT

VERSUS

BENSON MBATIA MWANGI ……...RESPONDENT

RULING

By notice of motion dated October 3, 2001, the applicant seeks an order to set aside the order of the business premises rent tribunal made on July 30, 1993, and the order of this court made on July 26, 2001.

Although the applicant had also asked for a review of the order of this court of July 26, 2001, at the hearing of this application the advocate for the applicant abandoned that prayer and did not argue it, preferring the prayer for setting aside the orders aforesaid. So, our ruling is restricted to what was asked of us, and no ruling on the review aspect of the original prayers.

The applicant says that since by the time the tribunal heard the reference the termination notice had expired long before the landlord filed the reference, the tribunal did not have the necessary jurisdiction to entertain the reference long after the expiry of the notice to terminate the tenancy.

It was submitted that after the expiry of the notice the tribunal lacked any jurisdiction to entertain any reference, and the tribunal's orders in such a reference are a nullity. Such orders being a nullity a party is entitled *ex debito* justistiae to have them set aside. It was further submitted that lack of jurisdiction can be raised at any time; and that that is why it has been raised before us, even though it was not raised in an earlier appeal in this very matter, in this court.

Opposing the application, the respondent's advocate argued that this application is an abuse of the process of the court; that the judgment and orders were regular and cannot be set aside; that the issue of jurisdiction cannot be raised after this court passed its judgment on the earlier appeal, particularly when the judgment is not being challenged; that it having taken ten years to conclude the matter, it is unjust to go over it again. We were asked to dismiss this application.

And we agree with the advocate for the respondent that this application be dismissed on the grounds that it is an abuse of the process of court. Why" Because, you see, even though issues of jurisdiction may normally be raised at any time, it would be wrong to raise them before the very court which determined the matter in which the point of jurisdiction ought to have been raised and determined. This court having already been seized of the appeal and decided it, it is *functus officio* in this matter of

this same reference about which the applicant complains.

To ask this court to re-open a matter which it ought to have been asked to decide in the appeal, and then suggest that in fact the court itself ought to have looked up the point of jurisdiction to decide it, is to complain about the judgment of this court. But we all know what should be done when one is dissatisfied with a judgment of a court. Except in the cases where the review procedure is appropriate, a dissatisfied litigant ought to seek a correction in an appellate court, and not to ask the same court to sit on appeal against its own judgment. This is exactly what this same court is being asked to do – to say and pronounce against its own judgment that in the earlier proceedings this court should have considered the jurisdictional competency of the tribunal in entertaining the reference.

If it is being felt that this court erred in not taking up and deciding the question of jurisdiction, then it is not this same court to decide whether it so erred.

It has not been argued that there is an error on the face of the record; and we have not been asked to do a review. Indeed review was dropped by the advocate for the applicant himself.

This is not a proper case in which the court may invoke its inherent jurisdiction. To do so in this case would be opening the floodgates to unsettling decisions long in repose.

For these reasons, we dismiss this application. The applicant shall pay the costs of this application.

It is so ordered.

Signed and dated by us at Nairobi, this 24th day of July, 2003, and delivered by us today, in the presence of

For the applicant and

For the respondent.

JOYCE ALUOCH

JUDGE

R. KULOBA

JUDGE

24.7.2003