



Mohammed v Rent Restriction Tribunal, Nairobi & 2 others (Environment & Land Petition 6 of 2023) [2023] KEELC 17673 (KLR) (25 May 2023) (Judgment)

Neutral citation: [2023] KEELC 17673 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 6 OF 2023
EK WABWOTO, J
MAY 25, 2023
(FORMERLY HIGH COURT E086 OF 2023)**

BETWEEN

STEVE GATOTO MOHAMMED PETITIONER

AND

RENT RESTRICTION TRIBUNAL, NAIROBI 1ST RESPONDENT

ROSEMARY WAITHERA BORU 2ND RESPONDENT

UPSTATE KENYA AUCTIONEERS 3RD RESPONDENT

JUDGMENT

1. This petition was instituted *vide* a petition dated March 19, 2023. The petitioner sought the following reliefs in the said petition:
 - i. That this honourable court finds that the 1st respondent as having no jurisdiction over the suit premises and declares the proceedings in Rent Restriction Tribunal No 197 of 2023 a nullity.
 - ii. That as a consequence of relief (i) this honourable court issue orders vacating the 1st respondent's orders of March 13, 2023 against the petitioner.
 - iii. That this honourable court issues an injunction against the 1st, 2nd and 3rd respondents barring them, their agents, servants and representatives from taking any action meant, connected or relating to the levying of rent on the premises plot Ngong/Ngong 6646 without the express authority of Mr Nelson Bolly Boru.



2. Contemporaneous to the filing of the petition, the petitioner filed an application dated March 20, 2023 seeking orders staying and or vacating the 1st respondent's orders of March 13, 2023.
3. The 1st and 3rd respondents upon being served did not file any response to the petition save for the 2nd respondent who filed a detailed replying affidavit sworn by Rosemary Waithera Boru on May 11, 2023.
4. Pursuant to the directions issued by this court on April 13, 2023, the court directed the parties to have the main petition canvassed by way of written submissions and the application dated May 20, 2023 be disposed with upon issuance of status quo orders. The petitioner filed his written submissions dated April 26, 2023. As at the time of preparation of this judgment, there were no written submissions filed by the respondents.
5. The petitioner submitted that the Rent Tribunal did not have jurisdiction to grant the orders issued on March 13, 2023. Those orders were as follows;
 - “1. That the plaintiff/landlord is hereby granted leave to levy distress on the defendant's/tenants good through a licenced auctioneer in order to recover the outstanding arrears and obtain vacant possession.
 2. That the OCS Ongata Rongai Police Station do provide assistance/security to the auctioneers.”
6. It was submitted that articles 26 (1), 28, 42 (6) & (d) of the *Constitution* safeguards a person's right to a safe and wholesome environment and dwelling. Article 46 of the *Constitution* protects consumer's rights.
7. It was stated that the premises allegedly being rented out for Kshs 20,000/- per month falls woefully short of fulfilling the above requirements hence the instructions from the owner that Mr Nelson Bolly Boru that they should not be rented out for being run down and inhabitable.
8. The petitioner contended that the Rent Restriction Tribunal was established pursuant to section 4 of the *Rent Restrictions Act* cap 296 and the purpose of the Act being to protect the tenant from unfair, illicit and arbitrary actions of a dwelling house owner as per the bill of rights. it was stated that the premises do not meet the criterial for a suitable dwelling house and further that they had been kept off from being let out by the owner Mr Nelson Boley Boru.
9. It was also submitted that article 40(1) of the *Constitution* protects the right to property pursuant to which the *Rent Restrictions Act* in its section 3(2) and (6) grants the Rent Tribunal the authority to intervene on its own motion and see to it the observance of the edicts of the *Constitution* and statutory laws. The petitioner's occupation of the premises is under an agreement entered into on August 21, 2021 with the owner Mr Nelson Boru for construction of a drainage system and the reclamation of the premises which work is ongoing at the petitioner's expense due to the tentative nature of the drainage system. The petitioner also added that, he is not occupying the premises for free as alleged by 2nd respondent.
10. The petitioner faulted the Rent Tribunal in issuance the orders on March 13, 2023 in favour of the 2nd respondent and thereafter sought the orders pleaded in his petition through intervention of this court.
11. The petition was opposed. The 2nd respondent on her replying affidavit sworn on May 11, 2023 averred that this court lacks jurisdiction to hear this petition pursuant to sections 2,5,8 and 30 of the *Rent Restriction Act* cap 296 Laws of Kenya.



12. It was also averred that the petitioner having filed a certificate of urgency dated March 14, 2023 at the Rent Restriction Tribunal Case No E197 of 2023 a day after the tribunal issued orders in favour of the 2nd respondent in the same case and where directions to take an interpartes hearing were given, the substantive issue in this petition is still pending and substantially before another forum with originating jurisdiction and thus this claim is expressly barred by the doctrine of sub-judice and ought to be dismissed with costs.
13. It was also averred that the court is also bereft of jurisdiction to entertain and hear the petition and notice of motion since parties are yet to exhaust the dispute resolution mechanisms spelt out under section 2,5,8 and 30 of the Rent Restriction Act cap 296 Laws of Kenya.
14. On the question of *locus standi*, the 2nd respondent deposed that the question of *locus standi* and ownership of the property is an attempt to evade and delay if not to defeat the ends of justice as at all times the petitioner negotiated and or dealt with her on the tenancy issues. She also provided to this court a copy of a duly registered power of attorney and letter dated April 20, 2022.
15. The 2nd respondent also stated that the petition was an abuse of the court process and urged this court to dismiss the same with costs.
16. The court has carefully considered the application and the entire petition dated March 19, 2023 and the written submissions filed by the petitioner and the court is of the view that the following issues are for determination: -
 - i. Whether the court has jurisdiction to entertain the petition.
 - ii. In answer to (i) above is in the affirmative, whether in light of doctrine of exhaustion and judicial restraint, the petition is ripe and properly for consideration by this court at this stage.
 - iii. What are the appropriate reliefs to issue herein?
17. I will address all the issues together, however the salient question which I will address myself on being whether the petition as it is, is ripe for determination by this court. In other words, should the petitioner have awaited the conclusion of the proceedings before Rent Restriction Tribunal Nairobi Case No E197 of 2023 before moving this court?
18. In this case, evidence was presented by both parties that is the petitioner and the 2nd respondent that there were live proceedings pending before Rent Restriction Tribunal Case No E197 of 2023 involving the same parties herein over the same subject matter.
19. The Court of Appeal in Nakuru civil appeal No 119 of 2017 Public Service Commission & 2 others v Eric Cheruiyot & 16 others consolidated with civil appeal No 139 of 2017 County Government of Embu & another v Eric Cheruiyot & 15 others (2022) KECA 15 (KLR) had the following to say on the aspect of jurisdiction: -

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “*Words and Phrases Legally Defined*”, Volume 3 at Page 113 defines court jurisdiction as follows: By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit



is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1. Nyarangi, JA. relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:....Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence.

A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

The Supreme Court in *In the Matter of Interim Independent Electoral Commission* [2011] eKLR, constitutional application No 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the [Constitution](#), statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:....a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In *Samuel Kamau Macharia and Another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, application No 2 of 2011, the Supreme Court reiterated its holding on a court's jurisdiction. In the matter of the *Interim Independent Electoral Commission* (supra) at paragraph 68 of its ruling, the Supreme Court held as follows: A court's jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law".

20. The Supreme Court in petition No 7 of 2013 [Mary Wambui Munene v Peter Gichuki Kingara and six others](#), [2014] eKLR, stated that 'jurisdiction is a pure question of law' and should be resolved on priority basis.
21. A look at the exhaustion doctrine now follows. The doctrine of exhaustion in Kenya traces its origin from article 159(2)(c) of the [Constitution](#) which recognizes and entrenches the use of alternative mechanisms of dispute resolution in the following terms:

“159(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles-(a)...(b)...(c)alternative forms of dispute resolution including resolution, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause 3.”



22. Clause 3 is on traditional dispute resolution mechanisms. The doctrine of exhaustion was comprehensively dealt *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (interested parties)* (2020) eKLR. The court stated as follows:

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. This encourages alternative dispute resolution mechanisms in line with article 159 of the Constitution and was aptly elucidated by the High Court in *R v Independent Electoral and Boundaries Commission (IEBC) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the court opined thus:42this doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words: Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

23. While this case was decided before the *Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. The Court of Appeal in the case of *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that: It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews.

24. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts.

25. In the instant case, the petitioner seeks reliefs which can be adequately addressed by the Rent Restriction Tribunal. The tribunal has powers to hear and determine the dispute at hand. On the basis of the foregoing, this court finds that the court's jurisdiction has been prematurely invoked. The petitioner ought to pursue his claim fully through the tribunal and in compliance with the law.

26. Having so found, a consideration of the rest of the issues in this matter will not aid the petitioner in any way. The court also declines to award costs and opts to end this matter here.

27. In the end, the petition dated March 19, 2023 and notice of motion dated March 20, 2023 are hereby determined as follows: -

- a) The petition dated March 19, 2023 and the notice of motion dated March 20, 2023 are hereby struck out.
- b) Each party to bear own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH MAY 2023.

E.K WABWOTO



JUDGE

In the presence of: -

***Steve Gatoto the Petitioner acting in person.**

N/A for the Respondents.

E.K. WABWOTO

JUDGE

