



**Republic v Chairman, Rent Restriction Tribunal; Nzaro (Interested Party); Wambua (Exparte)  
(Judicial Review Application 1 of 2021) [2023] KEELC 17988 (KLR) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17988 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**JUDICIAL REVIEW APPLICATION 1 OF 2021**  
**LL NAIKUNI, J**  
**MAY 23, 2023**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW  
PROCEEDINGS**

**AND**

**IN THE MATTER OF: THE RENT RESTRICTION ACT, CAP 296**

**AND**

**IN THE MATTER OF: ARTICLE 162(2)(B) OF THE CONSTITUTION OF KENYA AND THE  
ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011**

**AND**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT**

**AND**

**IN THE MATTER OF: THE DECISION AND ORDER  
MADE EX PARTE BY THE CHAIRMAN OF THE  
RENT RESTRICTION TRIBUNAL RESTRICTION CASE NO**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CHAIRMAN, RENT RESTRICTION TRIBUNAL ..... RESPONDENT**

**AND**

**JACKSON NGUWO NZARO ..... INTERESTED PARTY**

**AND**

**ANDREW WAMBUA ..... EXPARTE**



## JUDGMENT

### I. Preliminaries

1. The Judgement herein pertains to a Judicial Review suit instituted by the *Ex – Parte* Applicant – Andrew Wambua herein seeking certain prerogative writs to be issued by this Honourable Court against the Respondents herein. To begin with, and at the leave stage, the *Ex – Parte* Applicant filed a Chamber Summons Application dated 6<sup>th</sup> January, 2021 seeking orders that:
  - a. Spent.
  - b. The Ex - Parte Applicant Andrew Wambua be granted an order of Certiorari to remove into this Honourable court and quash all proceedings. the decision and orders made on 17<sup>th</sup> November 2020 or any such other proceeding and orders in the Rent Restriction Tribunal Case No. 142 of 2020, Mombasa, Jackson Nguwa Nzaro v Andrew Wambua & 2 others.
  - c. The Ex - parte Applicant Andrew Wambua be granted an order of Prohibition prohibiting the Respondent from hearing and determining Rent Restriction Tribunal Case No.142 of 2020, Mombasa, *Jackson Nguwa Nzaro vs. Andrew Wambua & 2 others* or any other case over the same subject matter.
  - d. Costs of this application be provided for.

### II. The case for the Ex parte Applicant

2. The application is premised on the grounds, testimonial facts and averments made out under the 15 Paragraphed Verifying Affidavit of Mr. Andrew Wambua, the Ex - Parte Applicant herein together with eight (8) annexures marked as “AW – 1 to 8” annexed thereon. He averred that:
  - a. At all material times hereto the Ex-Parte Applicant was the registered owner and landlord of all that property and dwelling premises erected there on in/about the year 2018 known as Title No. C.R. 72509/1 Apartment no. B4 on Block B erected on Sub division on 1584 (original number 67 rev/ 675 of Section I Mainland North known as Acacia Park Apartments, Nyali Mombasa County, herein after the demised premises. (Hereinafter known as “The Suit Property”).
  - b. By a tenancy agreement dated 1<sup>st</sup> June 2019, - Marked as “AW – 1”) the Interested Party rented from the Ex-parte Applicant the demised premises for a period of one-year renewable at a monthly rent in the sum of Kenya Shillings Seventy-Five Thousand (Kshs. 75,000.00/-) plus service charge, Kenya Shillings Ten Thousand all totalling Kenyan Shillings Eighty-five Thousand (Kshs. 85,000/-) payable in advance on or before 5<sup>th</sup> day of every month.
  - c. The Ex- Parte Applicant contended that the Interested Party failed to pay the due rents and service charge in time throughout the term that expired in June 2020. It was further contended that from July 2020 onward the Interested Party became a month to month tenant paying the same rent and service charge on the previous terms to date.
  - d. Despite having quite possession and peaceful enjoyment of the demised premises, the Interested Party persistently failed to meet his obligations as a tenant. By a letter dated 15<sup>th</sup> September 2020 the *Ex – Parte* Applicant through his advocates M/s Balala & Abed Advocates issued the Interested Party with a notice to terminate the tenancy, with the Interested Party



denying breach through M/S Musa Mugo Associates & Co. Advocates on 23<sup>rd</sup> September 2020. (the letters marked as “AW – 3 & 4”).

- e. On 3<sup>rd</sup> November 2020, the *Ex-Parte* Applicant through his said advocates instructed auctioneers trading in the names and style of “M/s. Work No Words Auctioneers” to levy distress on the attachable goods of the Interested Party for recovery of rent arrears. The said Auctioneers distressed on the Interested Party’s attachable goods on the same day.
- f. In the month of December 2020, the *Ex – Parte* Applicant learnt of a suit filed and injunction orders issued by the Chairman Rent Restriction Tribunal, sitting at Mombasa in RRT Case No. 142 of 2020.
- g. On filing suit on 16<sup>th</sup> November 2020, the Interested Party simultaneously filed a Notice of Motion application under Certificate of Urgency seeking injunction Orders against the *Ex- parte* Applicant. It was apparent from the record of proceedings that the Honourable Chairman of the Tribunal, upon hearing the Interested Party *Ex – Parte* granted the following orders:
  - i. That this application was certified as urgent and service of the same was in the first instance dispensed with.
  - ii. That the Defendant /Landlord, his agents employees servants and /or hirelings is hereby restrained from evicting, harassing and/or in any other manner interfering with Plaintiffs’ quiet enjoyment of the tenancy on the suit premises until the determination of this application.
  - iii. That the Plaintiff Tenant was to pay the outstanding together with accrued monthly rent in instalments so as to have cleared within 90 days.
  - iv. That “Inter partes’ hearing during the next court session on 9<sup>th</sup> April, 2021.
- h. The *Ex – Parte* Applicant was aggrieved by the filing of the said suit and issuance of the said *Ex – Parte* injunction orders by the Chairman of the Rent Restriction Tribunal that he had since been advised lacked jurisdiction and hence sought recourse from this Honourable Court.
  - i. He held that the Rent Restriction Tribunal had no jurisdiction to hear and determine dispute for dwelling houses whose rent exceeded a sum of Kenya Shillings Two Thousand Five Hundred (Kshs. 2, 500.00/=).
  - j. In his case the rent was a sum of Kenya Shillings Eighty Five Thousand (Kshs. 85, 000.00/=) inclusive of service charge, which was way far more than Kenya Shillings Two Thousand Five Hundred (Kshs. 2, 500.00/=). Which was the limit for the tribunal.
  - k. In any case the rent payable was not in dispute and there was no request from the Interested Party to the tribunal to assess the rent payable as standard rent.
  - l. The orders granted effectively suspended the monthly rent payable by compounding its payment with arrears, all to be payable in instalments before or by the 9<sup>th</sup> Aril, 2021 meaning that it could be paid in two instalments of the last two days to 9<sup>th</sup> April, 2021.
  - m. The order suspending the monthly rent payment was unfounded and unreasonable in the circumstances of this matter.
  - n. The further order that the O.C.S Nyalı Police Station enforces the injunction order to say the least was uncalled for, unreasonable and high handed.



3. As a consequence of the said decision the *Ex – Parte* Applicant was extremely prejudiced as the Interested Party had not paid any rents since September, 2020 to date. In the premises he had been denied rental income and in the circumstances unable to meet his financial obligations. He had children in schools opening this week requiring school fees and other educational needs as follows;
  - i. A son in form two at Moi High School Kabarak, opening on 4<sup>th</sup> January 2021 requiring Ninety thousand Five Hundred (Ksh.90,500/-).
  - ii. A son in the 2<sup>nd</sup> Year at Strathmore University, with an outstanding the in the sum of Kenya shillings Two Hundred and Sixteen Thousand, Four Hundred and Forty Two (Kshs. 216,442/-)
4. He was serving a car loan in the sum of Kshs. 5,000,000/- repayable within 36 months in monthly instalments of Kenya Shillings One Hundred Sixty-Three Thousand, Six Hundred and Ninety Three and Fifty Nine Cents (Kshs. 163,693.59) since 27<sup>th</sup> November 2020. He annexed and marked exhibit AW – 8 true copies of documentary evidence regarding the urgent pending financial obligations.
5. At the substantive stage, the *Ex – Parte* Applicant through a Notice of Motion application sought the following reliefs:
  - a. An order of *Certiorari* to remove into this Honourable court and quash all proceedings, the decision and orders made on 17<sup>th</sup> November 2020 or any such other proceeding and orders in the Rent Restriction Tribunal Case No. 142 of 2020, Mombasa, Jackson Nguwa Nzaro v Andrew Wambua & 2 others.
  - b. An order of Prohibition prohibiting the Respondent from hearing and determining Rent Restriction Tribunal Case No. 142 of 2020, Mombasa, *Jackson Nguwa Nzaro v Andrew Wambua & 2 others* or any other case over the same subject matter.
  - c. Costs of this application be provided for.
6. The Ex Parte Applicant relied on the following grounds for the reliefs sought:
  - i. On the ground of *ultra vires*, the Chairman, Rent Restriction Tribunal, Mombasa RRT Case No.142 of 2020 in entertaining the proceedings before him and granting injunction orders on 17<sup>th</sup> November 2020, acted *ultra vires* the [Rent Restriction Act](#). Chapter 296 laws of Kenya in that: The provision of Section 2 (1) (c) of the Act takes away the jurisdiction regarding a dispute relating to a dwelling house let out for a monthly rent in excess of Kenya Shillings two thousand five hundred (Kshs. 2,500) per month. In the absence of jurisdiction to entertain the dispute before him, the Chairman had no power to grant the Orders given on 17<sup>th</sup> November 2020.
  - ii. On the ground of jurisdictional error, the *Ex – Parte* Applicant averred that:- The Respondent in entertaining and granting the said impugned orders, made a jurisdictional error by erroneously interpreting the [Rent Restriction Act](#) as providing power to him to hear and determine a dispute relating to a dwelling house where the undisputed rent payable exceeds Kenya Shillings two thousand five hundred (Kshs. 2,500). No such power was conferred upon him as the jurisdiction over the same is reserved for the Environment and Land Court.
  - iii. On the issue or error of law, the Ex – Parte Applicant deponed that the Respondent failed to ascertain what the law is in respect of the power to hear and determine a dispute relating to environment a dispute relating to a dwelling house let out for a monthly rent in excess of Kenya Shillings two thousand five hundred (Kshs. 2,500.00/=) per month, he acted in ignorance, negligence or imprudence by deviating from the known legal principles conferring



authority to determine a dispute, he acted in misinterpretation, misunderstanding and/or blatant disregard of the law and the misdirection in law has caused a miscarriage of justice to the *Ex – Parte* Applicant.

7. The Applicant also relied on the ground of illegality where he deponed that the orders of injunction granted on 17th November 2020 by the chairman of the rent restriction tribunal in the said case were illegal, in abuse of the remedy of temporary injunction contrary the clear provisions of Order 40 rule 1 of the [Civil Procedure Rules](#), 2010 in that:
  - i. No reasons were recorded that the objective of granting the injunction would be defeated by the delay in serving the *Ex – Parte* Applicant so as to justify the hearing of the application *Ex – Parte*.
  - ii. The *Ex – Parte* injunction granted was for 6 months instead of a period of 14 days provided for by the law.
  - iii. The *Ex – Parte* injunction orders issued were not served upon the *Ex – Parte* Applicant within 3 days of issue as by law required.
  - iv. The injunction application was fixed for hearing in 6 months period without any good reasons contrary to the 60 days period fixed by law.
8. On the ground of natural justice, the *Ex – Parte* Applicant deponed that the Respondent failed to accord the *Ex – Parte* Applicant a right to be heard in that:
  - a. The Chairman of the tribunal did not accord the *Ex-Parte* Applicant audience to present before the said impugned orders.
  - b. Consequently the *Ex – Parte* Applicant has been prejudiced by the issuance of the *ex-parte* orders.
9. On the ground of unreasonableness, the Applicant deponed that the Respondent's decision and actions in entertaining and determining the purported dispute in RRT Case No. 142 of 2020 was unreasonable in that the same failed to consider and consider material facts inclusive the issue of jurisdiction. The order for injunction suspending payment of rent to within a period of 6 months' time from the date of injunction, while the interested party continues to stay in the premises is unreasonable in the circumstances. The Respondents decision and action in hearing and determination of the purported rent dispute was in light of the material facts known to him, outrageous and unreasonable in the circumstances.
10. On the ground of Improper exercise of discretion the Applicant averred that the Respondent improperly exercised discretion in granting the said orders, its lifespan and implications thereof before hearing the *Ex-parte* Applicant. There was no basis for grant of orders to the O.C.S to enforce the injunction orders. The discretion was exercised for improper motive and to serve self-interests.
11. On proportionality, the Respondent has acted in breach of the principles of proportionality. The Respondent in his actions failed to struck a fair balance between the adverse effects his decision and action of hearing and issuing the said orders would have upon their rights and interests of the parties vis-a-vis the wider public interest in the administration of justice. There is breach and/or a likelihood of breach of fundamental rights of the *Ex – Parte* applicant by the Respondent in hearing and granting *ex-parte* orders without the requisite jurisdiction and without affording the *Ex – Parte* Applicant a right to fair hearing. Due to lack of proportionality in the decision and actions of the Respondent herein against the *Ex – Parte* Applicant call for the order of certiorari to issue as an appropriate remedy.



12. The Ex – Parte Applicant averred that the Respondent acted in bad faith in that the Respondent in his decision and actions of purporting to hear and determine a purported rent dispute without jurisdiction was in breach of their duty to act in good faith in the interest of the applicant. The Respondent acted with malafide in purporting to exercise jurisdiction which he never had and purporting to hear and make orders against the Ex – Parte Applicant without proper basis.
13. On the issue of legitimate expectation, the Ex – Parte Applicant alleged that the actions and decisions of the Respondent in purporting to hear and determine a purported rent dispute without jurisdiction against the Ex – Parte Applicant herein violated the legal principles of legitimate expectation. The Ex – Parte Applicant like every other member of the public had the following, among others, legitimate expectations:
  - a. The Chairman of the Rent Restrictions Tribunal would not exercise the discretion vested in him and to his delegated agents in any unlawful manner.
  - b. The Chairman of the Rent Restrictions Tribunal and his agents would not ignore weighty and cogent evidence and/or lack of it in his conclusions as to whether he had jurisdiction to determine the purported rent dispute and so order in the manner he did.
  - c. The Ex – Parte Applicant shall rely on the violation of the foregoing principle of law in seeking the orders of certiorari.

### III. The Grounds of opposition

14. On 2<sup>nd</sup> November, 2022, the Office of the State the Attorney General filed grounds of opposition. They stated that:-
  - a. The application was misconceived, frivolous, vexatious and an abuse of the due process of the law.
  - b. The Ex – Parte Applicant had not exhausted all the remedies available to him hence the application filed in the face of Section 9 ( 2 ) of the Fair Administration of Action Act.
  - c. The Applicant herein had not appealed from and/or applied to set aside the orders complained of.
  - d. An assessment of standard rent for the suit premises had not been conducted pursuant to Sections 5 (1) ( a ) of the Rent Restriction Act. Cap 296 of the Laws of Kenya.
  - e. By virtue of Section 2 ( 1 ) of the Rent Restriction Act. Cap. 296 of the laws of Kenya the tribunal had jurisdiction over all dwelling – houses, other than those: Exempted dwelling house, dwelling house let on service tenancies and dwelling houses which had a standard rent exceeding Kenya Shillings Two Thousand Five Hundred (Kshs. 2, 500.00/=) per month, furnished or unfurnished.

### IV. Submissions

15. On 22<sup>nd</sup> November, 2022 the parties who had been granted time to canvass the in written submissions on 5<sup>th</sup> October, 2022 were granted until close of business by the Honourable Court to file their written submissions and the Honourable Court reserved the Judgment on notice. The Respondent is the only party that filed their submissions by the time the court retired to write this Judgment.



## A. The Written Submission by the Respondent

16. On 2<sup>nd</sup> November, 2022 the Respondent through the State Counsel filed their written submissions dated the same day. Mr. Makuto, the Senior Litigation Counsel commenced his submissions by stating that the *Ex – Parte* Applicant sought:
- a. An order of certiorari to remove into this court and quash all proceedings the decision and orders made on 17<sup>th</sup> November, 2020 or any other proceeding and order in Rent Restriction tribunal case No 142 of 2020, *Jackson Nguwa Nzaro versus Andrew Wambua and 2 Others*.
  - b. An order of prohibition prohibiting the Respondent from hearing and determining Restriction tribunal case No 142 of 2020, *Jackson Nguwa Nzaro versus Andrew Wambua and 2 Others* or any other case over the same subject matter.
17. The Learned Counsel submitted that the *Ex – Parte* Applicant alleged that he was the owner of that property known as CR. 72509/1 apartment B4 Block B erected on sub division No 1584 (Original 67 rev/ 675 of section 1 Mainland North known as Acacia Park Apartments, Nyalı Mombasa County, herein after referred to as the premises. According to the *Ex – Parte* applicant;-
- “The Tribunal has no jurisdiction to issue an injunction or similar remedy;
- The Tribunal does not have the requisite jurisdiction to deal with the tenancy dispute as the tenancy is not controlled;
- The Tribunal acted in excess or outside its jurisdiction.
18. In the verifying affidavit annexed to the statutory statement the *Ex – Parte* applicant averred that the tenants, paid a monthly rent of Kenya Shillings Ninety Thousand Five Hundred (Kshs.90,500/=).
19. The Learned Counsel submitted that according to the Applicant, the premises was excluded from the jurisdiction of the Tribunal due to the monthly rent being Kenya Shillings Ninety Thousand Five Hundred (Kshs.90,500/=) and which was above a sum of Kenya Shillings Two Thousand Five Hundred (Kshs 2,500/=). The Learned Counsel submitted that the *Ex-parte* Applicants erroneously argued that the Act excluded dwelling houses whose rent was above a sum of Kenya Shillings Two Thousand Five Hundred (Kshs.2,500/=) from the jurisdiction of the Rent Restriction Tribunal. According to the Counsel the provision of Section 2 of the [Rent Restriction Act](#) provides that:-
- 2
- (1) This Act shall apply to all dwelling-houses, other than-
    - a. Excepted dwelling house
    - b. Dwelling house let on service tenancies
    - c. Dwelling houses which have a standard rent exceeding two thousand five hundred per month, furnished or unfurnished.
20. A dwelling home has been defined as:-
- “any house or part of a house or room used as a dwelling or place of residence, and includes the site of the house and the garden and other lands and buildings let therewith and not as a separate entity or source of profit.”



21. The Learned Counsel held that from the pleadings on record, it was clear that the suit premises were being used as a residential/dwelling house. Being a residential house, the suit premises fell in the category of dwelling house and therefore in the bracket of all dwelling houses. The question therefore was whether or not the suit premises fell under the exemptions in the provision of Section 2 (1) (a) to (c).
22. It was the Learned Counsel's submission that no proof had been exhibited to show that the premise fell in the bracket of houses exempted from the application of the Act. No Gazette Notice had been produced showing that the dwelling house had been excepted by the minister from the application of the Rent Restriction Tribunal Act and neither had the *Ex – Parte* Applicant exhibited to this court that the standard rent exceeded a sum of Kenya Shillings Two Thousand (Kshs. 2,500/=). It was worth noting that standard rent was not the same as the rent payable. Standard rent is defined in Section 3 of the Act, as;
  - a. in relation to an unfurnished dwelling house
    - (1) If on 1<sup>st</sup> January, 1981, it was let unfurnished, the rent at which it was let unfurnished, the rent at which it was lawfully so let, the landlord paying all outgoings.
23. The Learned Counsel submitted that the Standard rent was set by the Tribunal under the provision of Section 5(1)(a) of the Act which provides that:-
  - (1) The tribunal shall have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in particular shall have power-
    - (a) to assess the standard rent of any premises either on the application of any person interested or of its own motion;
24. The Learned Counsel argued that nothing had been tabled in Court to prove that the suit premises was exempt from the application of the Rent restriction Tribunal Act as it did not fall within the exemptions.
25. On the issue of whether the tribunal has jurisdiction to grant the orders complained of the Learned Counsel submitted that under the provision of Section 30 of the Rent Restriction Tribunal Act the Tribunal's jurisdiction is set out as hereunder:-

“ 30 In and for the exercise of the powers conferred upon it by this Act, a tribunal shall have the same jurisdiction and powers in civil matters as are conferred upon the High Court, and in particular (but without prejudice to the generality of the foregoing) shall have power –

- a. To administer oaths, and to order persons to attend and give evidence or to produce and give discovery and inspection of the documents, in the same manner as in proceedings in the High Court, and for that purpose to authorize the chairman to issue summonses to compel the attendance of persons before it; and
- b. upon the determination of any application or other proceeding, in its discretion, to order any party thereto to pay the whole or any part of the costs thereof, and either itself to fix the amount of those costs or to direct taxation thereof by the taxing officer



of the High Court, either on the High Court scale or on the subordinate court scale.”

26. The Learned Counsel submitted that it was clear from the provisions of Section 30 that the tribunal was conferred with the same jurisdiction and powers as the High Court which has the power and authority to grant temporary orders of injunction pursuant to the provision of Section 63 (c) of the *Civil Procedure Act*, Cap. 21 and Order 40 Rule 2 of the *Civil Procedure Rules*, 2010. Indeed, this Honourable court has held in the case of “*Rent Restriction Tribunal v Raval Ex Parte May Fair Bakeries Ltd*, HC (1985) KLR 167 that:-

“on of the powers of the Tribunal is to investigate complaints relating to the tenancy and it has the same jurisdiction and powers in civil matters as conferred upon the High Court including that of granting injunctions.”

27. The Learned Counsel concluded that from the forgoing it was their submission that the tribunal has the power and authority to grant orders of injunction and pray that the application herein be dismissed with costs.

#### V. Analysis and Determination

28. I have carefully considered the Judicial Review application by the Ex – Parte Applicant, the grounds of opposition and written submissions by the Respondent herein, the provisions of the *Constitution* of Kenya, 2010 and the statutes.
29. For the Court to reach an informed, reasonable and fair decision, it has framed three (3) issues for its determination. These are:
- a. Whether the Judicial Review suit by the *Ex – Parte* Applicant herein seeking the prerogative writs of Certiorari and Prohibition has any meet?
  - b. Whether the parties herein are entitled to the reliefs sought of the Prerogative writs of Certiorari and prohibition.
  - c. Who will bear the Costs of the suit.

#### **Issue No. a). Whether the Judicial Review suit by the *Ex – Parte* Applicant herein seeking the prerogative writs of Certiorari and Prohibition has any meet?**

30. Under this Sub heading, it is critical for the Court to deliberate on the Concept of Judicial Review. First and foremost, it is important to appreciate the meaning of Judicial Review. The concept is based on the fact that administrative excesses must be checked through Judicial intervention. Administrative law relates to decision of offices or organs of Central Government or Public Authorities which may affect the rights or liberties of the citizens and which are enforceable in or organized by the courts of law. Therefore judicial review is an integral component of administration law.
31. The Purpose of Judicial Review was set out in the case of “*Municipal Council of Mombasa - Versus - Republic, Umoja Consultants Limited*, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, where the Court of Appeal held that:-

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at. Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they



take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.

32. In our legal parlance and jurisprudence, judicial review is founded under the provisions of Order 53 rules 1 to 7 of the [Civil Procedures Rules](#) 2010 where the prerogative orders are issued. Primarily, the provisions of Sections 8 and 9 of the [Law Reform Act](#) Cap 26 of the Laws of Kenya where the Provisions of Order 53 of the [Civil Procedure Rules](#) 2010 was borrowed from the case of *Farmers Bus Services v Transport Licensing Appeals Tribunal* (1975) E.A. 523. And upon the promulgation of the [Constitution](#) of Kenya in 2010 Article 47 of the [Constitution](#) of Kenya introduced the Provisions of Fair Administration of justice and later on the legislation of “the [Fair Administration of Action Act](#) of 2012” which is the statutory framework governing judicial review and the Administrative law in Kenya currently.
33. The legal efficacy and scope of the statutory order of Mandamus, Prohibition and *Certiorari* are remedies granted by High Court to persons inferred by the exercise of administrative of judicial powers. These prerogative orders are only available against public bodies. Their origins lie in the expansion of common law in England and the jurisdiction of the Court of King Bench to acquire Superintendence over the observance of law by officials. These orders are predicated upon the fact that without law, society cannot function with fundamental values such as social order, social justice and personal freedom. Today public authorities determine an overwhelming extent how much of these values are enjoyed. Their decision affect vast numbers of people collectively and individually “Ipso Facto” unlawfully decision, must be available to Judicial Scrutiny hence judicial Review. The social need for how and the protection of legality is violated when a public official exceeds his/her authority or does not use his/her power in the prescribed manner.
34. The prerogative writs of “*Certiorari*” derives from the Latin word “Certiorari” which means to be certified, informed, appraised or shown. Both in its embryonic days and today, the order, initially and prerogative writ was inferior courts and required the proceedings of that to be transferred to the High Court and examined for validity. It meant the decision would be quashed. From the Provisions of Order 53 of the [Civil Procedure Rules](#) the Applicant ought to move court within a period of six (6) months from the time the order, decree, judgment, conviction or other proceeding was made. The Order of “Prohibition” issues where there are assumption of unlawful jurisdiction or excess of jurisdiction. It’s an order from the High Court directed to an inferior tribunal or body as in this case the Kadhi’s Court. Its functions is to prohibit and/or forbids encroachment into jurisdiction and further to prevent the implementation of orders issued when there is lack of jurisdiction. The order of “Mandamus” is derived from the Latin word “Mandare” meaning to command. It is issued in cases where there is a duty of a public or a quasi-public nature or a duty imposed by statute, it compels the fulfilment of a duty where there is a lethargy on the part of a body or officer concerned.
35. In a nutshell Judicial Review is the means by which High Court judges scrutinize public law functions intervening as a matter of discretion to quash, prevent, require and/or classify not because they disagree with the judgment but so as to right a recognizable public law wrong. This public law wrong could be unlawfulness, Wednesbury unreasonableness or irrationality, unfair hearing, *ultra vires* bad faith, unfairness, made or arrived at out of excess powers (*ultra vires*) biasness, capriciousness or un Judicially.
36. In an application for Judicial review the Applicant must be a person with a sufficient interest – (*Locus Standi*) and who commences proceedings promptly. To support this legal concept on judicial review, I have made indepth references to several literature review and court decisions – “[Pharmaceutical](#)



manufacturers Association of South Africa in re- ex parte president of Republic of South Africa - 2000 S.A. 674 CC at 33 Republic v Speaker of the Senate and Another Ex-parte Afrison Export Import Limited 2018 eKLR Republic –Versus- Stanley Mambo Amuti (2018) eKLR.”; the Kenya National Examination Council v Republic ( Ex – Parte- Geoffrey Gathenji & Another Nairobi Civil Appeal No. 266 of 1996.

In the instant case, the *Ex – Parte* Applicant has sought all the above two out of the three known the writ prerogative Orders – certiorari and prohibition.

37. This court has powers under the provision of Sections 8 and 9 of the Law Reform Act, Cap. 26 of the Laws of Kenya to issue prerogative writ of *Certiorari*, which brings into this court to quash a decision which is *ultra vires*. A writ of prohibition intended to forbid or prevent an action by a public officer from taking place is granted alongside *Certiorari*, since it’s a similar remedy but more prospective than retrospective. While *certiorari* looks at the past, prohibition looks at the future. The provision of Section 8 of the Law Reform Act, also provides for a writ of prohibition which primarily prohibits a tribunals, judicial bodies or subordinate courts from doing or taking an action in excess of its jurisdiction.

38. In the book of “Administrative Law”, Sir. W. Wade and C. Forsyth, Page 605 noted that:-

“I can see no difference in principle between *Certiorari* and *Prohibition*, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on *certiorari*. I think that *prohibition* will lie to restrain it from so exceeding its jurisdiction.

Although *prohibition* was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective and equally often used, to prohibit the execution of some decision already taken but *ultra vires*. So long as the tribunal or administrative authority still had power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by *prohibition*. *Certiorari* and *prohibition* frequently go hand in hand, as where *certiorari* is sought to quash the decision and *prohibition* to restrain its execution. But either remedy may be sought by itself.”

39. Further, circumstances under which orders of Judicial Review can be issued were elaborated by Justice Kasule in the Uganda case of Pastoli v Kabale District Local Government Canal & others (2008) 2EA 300 at pages 300-304.

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires* or contrary to the provision of a law or its principles are instances of illegality----.

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.



Procedural impropriety, is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to decide. (*Al-Mehidswi...v...Secretary of State for the Housing Department* (1990) AC 876”.

40. What Judicial Review Orders entails was elaborated in the case of [\*Kenya National Examination Council v Republic Exparte Geoffrey Gathenji & 9 others\*](#), Nairobi Civil Appeal No.266 of 1996, where the Court held that: -

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue” It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See [\*Halsbury’s Law of England\*](#), 4<sup>th</sup> Edition vol.1 at Pg.37 paragraph 128.”

**ISSUE No. b). Whether the parties are entitled to the relief sought.**

41. From the foregoing cases, the applicable law in cases of Judicial review have already been established and this Court will now consider the above applicable law and further consider the available facts to determine whether the *Ex – Parte* Applicant is deserving of the orders sought.
42. The *Ex – Parte* Applicant has sought for orders of Prohibition and *Certiorari* to quash the decision of the Respondent in that the said decision was made ultra vires. An order of *Certiorari* can be made if the Court is satisfied that a tribunal decided and/or acted in excess of its jurisdiction, and further the Court can also issue an order of prohibition prohibiting the said tribunal from proceedings with the such proceedings.
43. The *Ex Parte* Applicant contended that he was the registered owner and landlord of the demised premises known as Title No. C.R. 72059/1 Apartment no. B4 situate at Acacia Park Apartments, Nyali Mombasa County, herein after the demised premises. By a tenancy agreement dated 1<sup>st</sup> June 2019, the Interested Party rented from him the demised premises for a period of one-year renewable at a monthly rent in the sum of Kenya Shillings Seventy-Five Thousand (Kshs. 75,000/-) plus service charge. Kenya Shillings Ten Thousand all totalling Kenya Shillings Eighty-five Thousand (Kshs. 85,000/-) payable in advance on or before 5<sup>th</sup> day of every month. In the month of December 2020, the *Ex – Parte* Applicant learnt of a suit filed and injunction orders issued by the Chairman Rent Restriction Tribunal, sitting at Mombasa in RRT Case No. 142 of 2020. On filing suit on 16<sup>th</sup> November 2020, the Interested Party simultaneously filed a Notice of Motion under Certificate of Urgency seeking injunction Orders against the *Ex- parte* Applicant. It is apparent from the record of proceedings that the Honourable Chairman of the Tribunal, upon hearing the Interested Party *Ex – Parte* granted.



44. The Respondent contended in their submissions that no proof has been exhibited to show that the premise falls in the bracket of houses exempted from the application of the Act. No Gazette Notice has been produced showing that the dwelling house has been excepted by the minister from the application of the Rent Restriction Tribunal Act and neither has the *Ex - Parte* Applicant exhibited to this court that the standard rent exceeds Kenya Shillings Two Thousand (Kshs. 2,500/=). According to the tenancy sub - lease agreement as at 20<sup>th</sup> June, 2019 the rent was a sum of Kenya Shillings Eleven Thousand (Kshs. 11,000,000/-) standard premium with a service charge of a sum of Kenya Shillings Thirty Thousand (Kshs. 30,000/-) per quarter.
45. The Jurisdiction of the Rent Restriction Tribunal, to hear and determine matters that relate to dwelling houses. This is found under the provisions of Section 2(1) of the [Rent Restriction Act](#), Chapter 296 Laws of Kenya, which provides that:-
- 2.
- (1) This Act shall apply to all dwelling-houses, other than -
- a. excepted dwelling-houses;
  - b. dwelling-house let on service tenancies;
  - c. dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.
46. The Court has already held that the dwelling house in question has a standard rent of Kenya Shillings Eighty Five Thousand (Kshs 85,000/-) per month inclusive of the service charge. The provisions of Law are clear that the said tribunal does not have jurisdiction, to deal with rent beyond Kshs. 2500/= per month. Therefore, it follows that in adjudicating over a matter which is in excess of its jurisdiction, the tribunal acted ultra vires.
47. In the case of “[Jobakim Abayo v Mokuwa Damacline Nyamoita](#) [2021] eKLR where the Court held that:-
- “21. This court has in the past pronounced itself on how the Tribunal should proceed whenever it is faced with a dispute where the agreed or prevailing monthly rent is more than Kshs 2,500. [see *Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & another (interested parties) Ex parte Charles Macharia Mugo* [2019] eKLR. For the umpteenth time, it is emphasized that the first business of the Tribunal in such circumstances is to assess standard rent with a view to establishing whether it has jurisdiction or not. Unless and until standard rent is ascertained, the Tribunal has no jurisdiction to entertain or issue orders in a dispute where the agreed or prevailing rent is more than Kshs 2,500 per month. It is not lost to this court that it is with this in mind that Parliament, through the Act, gave the Tribunal powers to assess rent on its own motion or upon application whenever it is seized of a dispute. The Tribunal assumes adjudicatory jurisdiction in such circumstances only when it has ascertained that the standard rent falls within the limits set by the statute. It ought to be understood that the [Constitution](#) has established other relevant adjudicatory bodies where tenancy disputes involving higher monthly rents are to be adjudicated.



22. Arising from the foregoing, I find that the Tribunal erred in holding that it had jurisdiction to entertain the claim in the suit before it in a context where the parties had agreed on a monthly rent of Kshs 20,000/= during the subsistence of the tenancy.”

48. From the foregoing, the Court finds and hold that the Respondent had no jurisdictions to hear and determine the matter before it involving the suit property. Having found that the Respondent acted in excess of its jurisdiction, then any orders that was made ought to be quashed and the proceedings struck out. Further the Respondent is hereby prohibited from proceeding with the matter.

#### **ISSUE No. c). Who will bear the Costs of the Suit.**

49. Regarding the issue of Costs, it is now well established that these are matters at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of any legal action, process or proceedings in any litigation. The proviso of Section 27 ( 1 ) of the *Civil procedure Act*, cap. 21 and several Court decisions, including the Court of Appeal case of “*Rosemary Wambui Munene – Versus Ibururu Dairy Co – operative Society* (2014) eKLR and the Supreme Court case of “*Jasbir Rai Singh – Versus – Tarchalon Singh* (2014) eKLR”.

50. By following the event means the outcome of the case. In the instant case, the *Ex – Parte* Applicant herein has been able to successfully demonstrate his case as instituted. For that reason he is entitled to the costs of the suit.

#### **VI. Conclusion & Disposition**

51. In conclusion, having carefully read and considered this Judicial Review Application together with Affidavits and written submissions and caused an elaborate and comprehensive analysis to the framed issues herein, the Honourable Court is fully satisfied that the Ex Parte Applicant has on a preponderance of probability established its case herein. Specifically, the Court finds as follows:-

- a. That the said Judicial Review suit herein by the Ex Parte Applicant be and is hereby merited.
- b. That the *Ex – Parte* Applicant Andrew Wambua be granted an order of Certiorari to remove into this Honourable Court and quash all proceedings. the decision and orders made on 17<sup>th</sup> November 2020 or any such other proceeding and orders in the Rent Restriction Tribunal Case No. 142 of 2020, Mombasa, *Jackson Nguwa Nzaro v Andrew Wambua & 2 others*.
- c. That the Ex-parte Applicant Andrew Wambua be granted an order of Prohibition prohibiting the Respondent from hearing and determining Rent Restriction Tribunal Case No.142 of 2020, Mombasa, *Jackson Nguwa Nzaro v Andrew Wambua & 2 others* or any other case over the same subject matter.
- d. That Costs of this suit to be borne by the Respondent and the Interested party herein to be awarded to the Ex - Parte Applicant.

52 It is so ordered accordingly.

**JUDGEMENT DELIVERED THROUGH THE MICROSOFT TEAMS VIRTUAL MEANS,  
SIGNED AND DATED AT MOMBASA THIS 23<sup>RD</sup> DAY OF MAY 2023.**

**HON. JUSTICE L. L. NAIKUNI, (JUDGE)**

**ENVIRONMENT AND LAND COURT AT**



## **MOMBASA**

Judgement delivered in the presence of:

- a. M/s. Yumna, Court Assistant;
- b. M/s. Muiruri holding brief for Mr. Nyadieka Advocate for the Ex – Parte Applicant
- c. No appearance for the Respondent.

