



**Republic v The Rent Restriction Tribunal (Nairobi); Musau (Interested Party); Kang’ethe (Exparte Applicant) (Judicial Review 12 of 2020) [2023] KEELC 19185 (KLR) (26 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19185 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
JUDICIAL REVIEW 12 OF 2020  
LC KOMINGOI, J  
JULY 26, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE RENT RESTRICTION TRIBUNAL (NAIROBI) ..... RESPONDENT**

**AND**

**THOMAS MALINDA MUSAU ..... INTERESTED PARTY**

**AND**

**JACINTA MUMBI KANG’ETHE ..... EXPARTE APPLICANT**

**JUDGMENT**

1. The *Exparte* Applicant filed the Notice of motion dated September 30, 2020 seeking:
  - a. That an order of certiorari do issue to quash the entire decision of the Rent Restriction Tribunal in case No 702 of 2017-Thomas Malinda Musau v Jacinta Mumbi Kang’ethe issued on August 13, 2019.
  - b. That an order of prohibition do issue prohibiting the Rent Restriction Tribunal from hearing any claim relating to the Interested Party’s tenancy, possession and occupation of all that premises known as House 626 Buruburu.
  - c. That this Honourable Court be pleased to give any other necessary directions.
  - d. That costs of this application be provided for.
2. The motion is supported by the statutory statement dated January 30, 2020 and the *Ex-Parte* Applicant’s verifying affidavit sworn on January 30, 2020.



3. She deposes that House No 626 is registered in the name of her late husband Joseph Kange' the Kimani and that she administers the deceased's estate together with Benson Kimani.
4. She avers that she issued the Interested Party with a 3 months' notice to vacate the suit premises owing to non-payment of rent. Subsequently, the Interested Party filed Rent Restriction Case No 702 of 2017 and at the institution of the suit, rent payable was ksh 35,000/=
5. She contends that the tenancy was not a protected tenancy under the Rent Restriction Act, Cap 296 as the rent payable exceeds the statutory standard of ksh 2,500/= thus the proceedings undertaken by the rent restriction Tribunal are irregular.
6. She deposes that she raised the issue of jurisdiction in her defence at the Tribunal but in its ruling dated August 13, 2019, the Tribunal dismissed the issue on grounds that it had not been raised through a preliminary objection.
7. She avers that the Tribunal restrained her from evicting the Interested Party or interfering with the terms of the tenancy which decision is in breach of Article 40 of the Constitution which prohibits any person from arbitrarily depriving a person of property.
8. In response, the Interested Party filed a replying affidavit sworn on November 19, 2020. He argues that the application herein is an appeal disguised as a judicial review application. He also contends that there was no assessment of premises to ascertain the standard rent payable.
9. In response, the Respondent filed grounds of opposition dated December 9, 2021. It also argues that the application is an appeal disguised as Judicial review.
10. The matter was canvassed by way of written submissions.

#### **The Ex-Parte Applicant's Submissions.**

11. They are dated November 27, 2021 and raise the following issues for determination;
  - a. Whether the Rent Restriction Tribunal had jurisdiction to determine the dispute.
  - b. Whether challenging the issue of jurisdiction in a defence and submissions was irregular.
  - c. Whether the decision of the Rent Restriction Tribunal was lawful
  - d. Whether the application herein is an appeal disguised as a Judicial Review application.
12. The Ex -Parte Applicant submits that as Per Section 2(1) (c) of the Rent Restriction Act the Rent Restriction Tribunal has no jurisdiction to entertain a dispute where standard rent exceeds ksh 2,500/=. She argues that since there was no dispute that the rent payable for the suit premises is ksh 35,000/=, it would be irrelevant to ascertain rent. She relies on the case of *Republic v Chairman Rent Restriction Tribunal and another ex parte Ezekiel Machogu and 3 others* [2003]e KLR, the case of *Republic v Deputy Chairman, Rent Restriction Tribunal Ex -Parte Joseph Kagwatha* [2019]e KLR as well as the case of *Republic v Chairman, Rent Restriction Tribunal Ex Parte Agatha Njoki Mwangi* [2015]e KLR.
13. The *Ex-Parte* Applicant also submits that there is no bar to a party raising any defence including jurisdiction and limitation of time or other issue that may determine the matter summarily. She argues that the Tribunal fell in error in dismissing the issue of jurisdiction merely based on the form it was raised and the time it was argued. She cites the case of *Adero Adero & another v Ulinzi Sacco Society Ltd* [2002] eKLR, *Kenya Ports Authority v Modern Holding [EA ] limited* [2017] eKLR as well as the case of *Lemita Ole Leimein v Attorney General & 2 others* [2020]e KLR.



14. On the issue whether the decision of the Tribunal was lawful, he submits that it held that the Notice issued to the Interested Party did not meet the requirements of Section 14(1) of [Cap 296](#) yet the said Act is inapplicable to the tenancy herein. She further submits that clause 4 of the tenancy agreement gave either party the right to terminate upon issuance of a 3 months' notice and no reason was required before issuance of such notice thus it was not for the Tribunal to re-write the agreement for the parties.
15. On the issue whether the application is disguised as an appeal, she states that the application falls within the grounds for Judicial Review provided under Section 7 of the [Fair Administrative Action Act](#).

#### **The Interested Party's Submissions.**

16. They are dated August 15, 2022. They raise the following issues for determination;
  - a. Whether or not the *Ex-Parte* Applicant appropriately moved the Tribunal on the issue of jurisdiction.
  - b. Whether or not the application for judicial review is merited.
  - c. Which party should bear costs?
17. The Interested Party argues that where a party intends to rely on appoint of law, the same ought to be done by way of a preliminary objection and raised at the earliest time possible. He points out that during the trial at the tribunal, the *Ex Parte* Applicant did not raise any preliminary objection opposing and /or challenging the jurisdiction of the Tribunal but instead consented to dispose of the matter by way of written submissions thus by consent she subjected herself to the jurisdiction of the tribunal. He cites the case of [Joseph Kibaara M'Icuga v M'chabari Kinoro](#) [2020] eKLR as well as the case of [Gladys Praeruan v Betty chepkorir](#) [2020]e KLR.
18. It is also his submission that the prayers sought are untenable and the same should not issue as the Applicant is challenging a decision and not the decision making process. He puts forward the case of [Republic v Public Procurement Administrative Review Board & 2 others Ex Parte Pelt Security Services Limited](#) [2018] eKLR.

#### **The Respondent's Submissions.**

19. They are dated July 7, 2022 and raise the following issues for determination;
  - a. Whether the Tribunal had jurisdiction to address the matter.
  - b. Whether the Court should quash the decision of the Tribunal.
20. The Respondent admits that it can handle matters of rent disputes whose monthly rent does not exceed ksh 2,500/= but argues that the matter in dispute was not value for rent but rather the issue was the termination of the tenancy agreement hence it was within its jurisdiction.
21. It also submits that the suit is prematurely before this court as the *Ex -Parte* Applicant overlooked Section 9(2) of the [Fair Administrative Act](#) as read with Section 5(1) (m) of the [Rent Restriction Act](#).
22. I have considered the Notice of Motion, the grounds and the affidavit in support. I have also considered the responses thereto, the rival submissions and the authorities cited. The issues for determination;
  - i. Whether the Rent Restriction Tribunal had jurisdiction to hear and determine the dispute.
  - ii. Whether the *Exparte* Applicant is entitled to the reliefs sought.
  - iii. Who should pay costs of this suit?



23. Section 2 (1) of the [Rent Restriction Act](#), (Cap 296 Laws of Kenya) provides that;

“ This Act shall apply to all dwelling houses, other than-

- a. Excepted dwelling houses;
- b. Dwelling house let on service -----
- c. Dwelling houses which have a standard not exceeding two thousand five hundred shillings per month, furnished or unfurnished.

24. From the Tenancy Agreement dated February 16, 2015, it is not in disputed that the agreed rent was Kshs 35,000/ per month.

The holding in the Motor Vessel “Lilliars” case (1989) KLR establishes that jurisdiction flows from law and the recipient court is to apply the same with any limitation embodied therein. Such a court may not arrogate to itself jurisdiction through craft of interpretation or by way of endeavor to discern or interpret the intention of parliament where the wording of legislation is clear and there is no ambiguity”.

25. In the instant scenario the rent having been agreed at Kshs 35,000/= per month means the tribunal had no jurisdiction to deal with this dispute. The rent could not be assessed by the Tribunal.

In the case of [Republic Vs Chairman Rent Restriction Tribunal & Another](#).

[Exparte Ezekiel Machoge & 3 Others](#) (2013) eKLR. It was held that;

“The Chairperson of the Tribunal appreciated that the issue in the matter concerned, whether the agreed rent of Kshs 3000/= should have been raised to Kshs 3,500/=

Although Section 5(1)(a) of the Act empowers the tribunal to assess the standard rent either on application of any interested person or of its own motion, the case before court did not call for assessment of the standard rent as the rent was already agreed upon as between the landlord and tenant (See *Gershani Vs Ombima* (1975) EA 135 and *Shah Vs Aggarwal* CA Civil Appeal No60 (1983) KLR). I therefore find and hold that the amount of rent and the fact that was agreed removed the subject premises from the definition of standard rent prescribed by the Act and therefore from the jurisdiction of the tribunal.

The tribunal cannot appropriate jurisdiction to investigate or assess rent where the rent agreed by the landlord and tenant is above the standard rent as defined by the Act”.

26. Similarly in the case of [Republic Vs Deputy Chairman Rent Restriction Tribunal Butrus Juma \(Interested Party\) Exparte Joseph Kagwatha](#) (2019) eKLR, it was held that;

“It is not in dispute that the Interested Party was paying a monthly rent of Kshs 25,000/= per month. This is clear from the tenancy agreement marked as Annexure JK2 to the Exparte Applicant’s supporting affidavit. Section 2 (1) of the Rent Restriction Act (Cap 296 Laws of Kenya) is clear that the Act shall apply to dwelling houses which have a standard rent of Kshs 2,500/= per month, furnished or unfurnished. It is also clear that the standard rent could not be assessed by the Tribunal. In the instant case since the rent has already been agreed upon by the landlord and tenant. It is therefore not in doubt that the tribunal lacked jurisdiction to entertain the Interested Party’s application”.

27. I find that the Tribunal had no jurisdiction to entertain the dispute herein.



28. Having stated that the Tribunal had no jurisdiction to entertain the dispute, it goes without saying that the *Exparte* Applicant is entitled to the reliefs sought.
29. I agree with the submissions of counsel for the *Exparte* Applicant that the Tribunal's decision to permanently injunct the *Exparte* Applicant from her own premises forever goes contrary to law and runs a foul to the right to property as enshrined under Article 40 of the *Constitution*.
30. In conclusion, I find merit on the Notice of Motion dated September 30, 2020 and I grant the orders sought namely;
  - a. That an order of Certiorari is hereby issued to remove into this court for the purpose of quashing and they are hereby quashed, all proceedings and any decision and/or orders made in Rent Restriction Tribunal Case No 702 of 2017; Thomas Malinda Musau Vs Jacinta Mumbi Kang'ethe and issued on August 13, 2019.
  - b. That and order of Prohibition is hereby issued prohibiting the Rent Restriction Tribunal from hearing any claim relating to the Interested Party's tenancy, possession and occupation of all that premises known as House 626 Buruburu.
  - c. That the costs of this suit be borne by the Interested Party.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF JULY 2023.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

N/A for *Exparte* Applicant

N/A for Respondent

N/A for Interested Party.

Court Assistant - Mutisya

