



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 571 OF 2017

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES 22, 23(F), 48 AND 50

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF THE RENT RESTRICTION ACT

AND

IN THE MATTER OF SECTION 8, AND 9 OF THE LAW REFORM ACT

2018

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE RENT RESTRICTION TRIBUNAL.....RESPONDENT

AND

HARRISON SIMON CHEGE.....INTERESTED PARTY

EX-PARTE: ALLAN GACHIRI RAGI

JUDGMENT

The Application

1. Allan Gachiri Ragi, who is the *ex parte* Applicant herein, (hereinafter the Applicant”) is a landlord, and he rented out a house to Harrison Simon Chege, the Interested Party herein. The said Interested Party instituted a complaint before the Rent Restrictions Tribunal which is the Respondent herein, citing wrongful detainment of his goods. The said complaint and proceedings were undertaken in **Nairobi Rent Restrictions Tribunal Case No. 1100 of 2017**. The Respondent’s chairman thereupon issued orders therein on 8th September 2017 that a mandatory injunction issue against the Applicant restraining him from blocking/ detaining the Interested Party, or in any other manner preventing him from vacating the suit premises with his household goods pending hearing of the complaint. The Interested Party filed another application on 13th September, 2017, seeking further interim orders, and the Respondent’s chairman granted him leave to break into the suit premises for purposes of gaining access and removing his household goods.

2. The Applicant thereupon moved this Court by way of a Notice of Motion application dated 21st September 2017, in which he seeks the following orders:

a. An order for Certiorari against the Respondent, to bring into this court for purposes of quashing the Respondent's orders of 8th September, 2017 and 14th September, 2017.

b. An order of prohibition to prohibit the Respondent from further hearing and making determinations in Nairobi Rent Restrictions Tribunal Case No. 1100 of 2017

c. An order for costs in favour of the Applicant.

3. The Application is supported by the grounds on its face, a Statutory Statement and a Supporting Affidavit sworn by the Applicant both dated 19th September, 2017 and filed in court on even date. The Applicant avers that that he was only served with the first set of orders without the subject application on 12th September 2018, and contended that the said orders were issued without jurisdiction pursuant to Section 2(1)(c) of the Rent Restrictions Act and *ultra vires* the Respondent's powers.

4. Secondly, that the orders effectively dispensed with the matter without affording the Applicant an opportunity to be heard. In addition, that in a bid to stay the orders of 8th and 14th September, 2017, the Applicant filed an application challenging the jurisdiction of the Respondent, but the Respondent declined to issue an order of stay of its earlier orders giving rise to the instant application.

5. The Respondent and the Interested Party did not file any responses to the said application.

6. Ms. Nyambura, the counsel who appeared for the Applicant submitted that the orders of 8th and 14th September, 2017 granted by the Respondent were devoid of jurisdiction pursuant to Section 2(1)(c) of the Rent Restrictions Act, and *ultra vires* its powers and effectively dispensed with the matter without according the Applicant an opportunity to be heard. She contended that vide the Plaint dated 5th September, 2017, it was conceded by the Interested Party that the monthly rent of the subject premises was Kshs. 12,000/- per month well above the pecuniary jurisdiction of Kshs. 2,500/- of the Respondent.

7. She further submitted that the failure to grant the Applicant an opportunity to be heard was in contravention of Article 48 and Article 50(1) of the Constitution. It was therefore her submission that the orders by the tribunal which were both granted *ex-parte* and devoid of service of pleadings to the Applicant amounted to grave injustice to the Applicant and an affront to the rule of law and rules of natural justice and urged the court to grant the orders sought.

8. To buttress her argument, the counsel relied on the case of **Uwe Meixner & Anor vs Attorney General, (2005) eKLR** in which the court stated that judicial review is concerned with the decision making process and not the merits of the decision itself. She further relied on the case of **Republic vs Cabinet Secretary for Internal Security Ex-parte Gregory Oriaro Nyauchi & 4, (2017) eKLR** where the court held that only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of it or where the rules of natural justice are not complied with.

9. Counsel further submitted that having established the illegality in the matter, proceeding with the matter would amount to an abuse of the court process. As such, she relied on the case of **DPP vs Martin Maina & 4 Others, (2017) eKLR** where it was noted that an order of prohibition can be issued to prohibit the continued hearing if it's noted that the process would be an abuse of court. She also relied on the case of **Kenya National Examination Council vs Republic Ex-Parte Geoffrey Gathenji Njoroge & 9 Others, (1997) eKLR** where the court stated that an order of prohibition can be issued for excess jurisdiction or where there is departure from the rules of natural justice.

10. It was counsel's submission that given that the orders were issued based on misrepresentations by the Interested Party, they amounted to grave injustice to the Applicant and an affront to the rule of law and the rules of natural justice. She therefore urged the court to grant an order of prohibition from further making any determinations in **Nairobi Rent Restrictions Tribunal Case No. 1100 of 2017** and relied on the case of **Jipe House Kindergarten Limited vs City Council of Nairobi, (2012) eKLR**.

11. In conclusion, she submitted that the application meets all the parameters of law that are required for judicial review orders to be sought and therefore properly merited to warrant the order sought. Accordingly, she relied on the cases of **Republic vs Deputy Chairman Rent Restriction Tribunal & Anor Ex-parte Benedict Wambua Kenzi, (2016) eKLR** and **Republic vs Chairman Rent Restriction Tribunal & Anor Ex-Parte Ezekiel Machogu & 3 Others, (2013) eKLR**.

The Determination

12. The instant application was canvassed by way of written submissions dated 30th November, 2018 by the Applicant. I have considered the pleadings, submissions and arguments made by the Applicant and find that the issues arising for determination are firstly, whether the Respondent had jurisdiction to consider the Complaint by the Interested Party. If the Court finds in the affirmative, it will then proceed to consider the other substantive issue namely; whether the Respondent acted fairly in making its orders of 8th and 14th September, 2017. The last issue for determination is whether the Applicant merits the prayers sought.

13. The Applicant has submitted that the Respondent granted orders without jurisdiction contrary to Section 2(1)(c) of the Rent Restrictions Act, Cap 296 and *ultra vires* its powers. I have carefully examined the legal framework of the Rent Restrictions Act and Section 2(1)(c) of the Act states that:

“2. Application

“(1) This Act shall apply to all dwelling-houses, other than—

(a);

(b);

(c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.”

14. The Applicant contends that the Interested Party vide its Plaint dated 5th September, 2017 conceded that the monthly rent was Kshs. 12,000/-, well above the Respondent’s pecuniary jurisdiction of Kshs. 2,500/-. It is also not in contention that the suit premises was a dwelling house. The Respondent is a creature of the statute, and thus has jurisdiction as specifically conferred upon it by the statute. It is clear from the pleadings and the annexures thereto that the monthly rent was agreed between the Applicant and the Interested Party at Kshs. 12,000/-.

15. That being the case, the Respondent had no jurisdiction to entertain RRT Case No. 1100 of 2017 nor issue any orders as the rent payable exceeded Kshs. 2,500/=. In **Republic vs The Chairman Rent Restriction Tribunal & Another Ex Parte Ezekiel Machogu & 3 Others, [2013] eKLR**, Majanja J held that:

“It is clear that the jurisdiction of the tribunal is specifically defined and it relates to standard rent or assessment thereof which does not exceed Kshs. 2,500/= per month. It is not in dispute that the rent for the suit premises was agreed and beyond the jurisdictional limit for the Tribunal.”

16. Having established that the Respondent acted without jurisdiction, it therefore follows that the orders of 8th and 14th September, 2017 and the proceedings thereto are a nullity.

17. The last issue I therefore need to address is whether the application merits the orders sought. Order 53 Rule 7 (1) and (2) provides that the High Court can issue an order of certiorari to remove any proceedings for the purpose of being quashed. In addition, the Court of Appeal in the case in **Kenya National Examination Council vs Republic, Exparte Geoffrey Gathenji & 9 Others, (1997) e KLR** held that an order of certiorari issues to quash a decision already made and if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with.

18. On the grant of an order of prohibition, the said Court held as follows:

“ ...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 of 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, 4th Edition, Vol.1 at pg.37 paragraph 128....”

19. Therefore, in order to be amenable to judicial review, the decision or action sought to be reviewed ought to be unlawful or likely to be unlawful, or the Applicant needs to demonstrate that there is failure to act in on the part of the Respondents in the exercise of a public function. In addition, the purpose of a prohibiting order as is sought by the Applicant, is to restrain threatened or impending unlawful conduct.

20. This Court has found that the Respondent did not have the jurisdiction to entertain the complaint by the Interested Party, and has no jurisdiction to entertain any complaints as regards the suit premises that were the subject matter of **Nairobi Rent Restrictions Tribunal Case No. 1100 of 2017**. Its decision is therefore amenable to quashing, and it does not have power to entertain any further proceedings in the said case.

21. In the premises, the Applicants’ Notice of Motion dated 21st September 2017 is found to have merit for the foregoing reasons, and I accordingly order as follows:

a. An Order of Certiorari be is hereby issued to remove into the High Court for the purposes of quashing all proceedings and the orders made by the Chairman of the Rent Restriction Tribunal on 8th and 14th September, 2017 in Nairobi Rent Restrictions Tribunal Case No. 1100 of 2017.

b. An order of prohibition be and is hereby issued prohibiting the the Rent Restriction Tribunal from further hearing and making determinations in Nairobi Rent Restrictions Tribunal Case No. 1100 of 2017.

c. The Respondent shall meet the costs of the Notice of Motion dated 21st September 2017.

22. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2019

P. NYAMWEYA

JUDGE