



**Kenya Conference of Catholic Bishops v Chief Magistrate's Court at Milimani
Commercial & another (Environment and Land Judicial Review Case
E016 of 2022) [2023] KEELC 20050 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20050 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E016 OF 2022
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

KENYA CONFERENCE OF CATHOLIC BISHOPS APPLICANT

AND

**CHIEF MAGISTRATE'S COURT AT MILIMANI COMMERCIAL 1ST
RESPONDENT**

JIMLIZER HOTEL LIMITED 2ND RESPONDENT

JUDGMENT

1. The *Exparte* Applicant herein is the registered owner of the suit premises L.R.NO. 4985/1 of which he leased out the said premises to the 2nd Respondent vide a lease agreement dated 20.9.2020. Apparently, the parties had a fall out and the *Exparte* Applicant issued a notice of termination of the lease to the tenant who in turn filed the suit before the Magistrates Court in the case Milimani E13301 OF 2021. The orders issued before the said court are the ones which triggered the filing of this Judicial Review suit.

Case for the Exparte Applicant

2. Vide the Substantive Notice of Motion Application dated 1.11.2022 and amended on 18.1.2023, the Exparte Applicant seeks the following orders:
 - i. That an Order of *Certiorari* do hereby issue quashing the entire decision made by the 1st Respondent on 11th February, 2022 affirming the Court's jurisdiction and extending interim orders on 5th January, 2022 in Nairobi Milimani Case No. E13301 of 2021.



- ii. That an Order of Certiorari do hereby issue quashing the entire decision made by the 1st Respondent on 1st April, 2022 reaffirming the Court's jurisdiction in Nairobi Milimani Case No. E13301 of 2021.
 - iii. That on Order of Mandamus do hereby issue compelling the 2nd Respondent and/or his agents or subtenants to vacate any existing orders of injunction against the Applicant and orders permitting the 2nd Respondent to continue in occupation and/or acts of developing the property of the Applicant situated at L.R. no. 4985/1/ on Thika Road, Nairobi.
 - iv. That an Order of Prohibition do hereby issue directed to the 1st Respondent restraining the 1st Respondent from entertaining any further proceedings in Nairobi Milimani Case No. E13301 of 2021 between the Applicant and the 2nd Respondent and any other or related proceedings touching on the Lease dated 20th September 2020.
 - v. That a declaration do hereby issue that the 1st Respondent lacks jurisdiction to deal with the matter in dispute between the Applicant and the 2nd Respondent relating to the lease on L.R.No. 4985/1 Thika Road Nairobi.
 - vi. That costs of this Application be provided.
3. The case of the *Exparte* Applicant as contained in the above application, its verifying Affidavit and statutory statement of facts is that vide the lease agreement dated 20.9.2020, the 2nd respondent was permitted use of the suit premises as a petrol station and ancillary services including a tyre center, a car wash service, a service bay, a restaurant and a snack shop. However, the 2nd respondent went ahead and constructed permanent structures on the suit premises and proceeded to set up various businesses like furniture shops, a mini supermarket, a stationary shop, a chemist, wines and spirit shop beyond the permitted scope of the lease agreement.
 4. The Applicant therefore avers that the 2nd respondent violated the terms of the lease agreement, thus it had every right to intervene by issuing a notice to terminate the lease.
 5. That upon issuance of the termination notice, the 2nd respondent filed the suit E13301 OF 2021 in Milimani Chief Magistrates Court where they obtained temporary injunctive orders on 21.12.2021. The *Exparte* Applicant filed a Preliminary Objection dated 18.1.2022 claiming that the court lacked jurisdiction to handle the matter as the lease agreement had an arbitration clause, and that the trial court did not have pecuniary jurisdiction to hear the case.
 6. That in a ruling delivered on 11.2.2022, the trial court dismissed the Applicants Preliminary Objection. Being aggrieved by the said ruling, the Applicant filed an application dated 21.2.2022 seeking orders for the striking of the suit for want of pecuniary jurisdiction and in the alternative, the suit to be stayed and the matter to be referred for arbitration. The Applicant contended that its valuation report indicated that the value of the land was 130 million in addition to improvements of 70 million, thus the entire market value of the property was 200 million.
 7. In the ruling delivered on 1.4.2022 the *Exparte* Applicant's application dated 21.2.2022 was dismissed.
 8. The *Exparte* Applicant contends that the 1st respondent acted in excess of the authority and jurisdiction by holding that the court had jurisdiction to determine the matter. Thus the applicants right to administrative action that is fair reasonable and procedural was violated.
 9. In its submissions dated 27.6.2023, the *Exparte* Applicant reiterated the averments set out in its pleadings/ documents and proceeded to profer the following authorities; *Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others* [2016] eKLR, *Martin Nyaga Wambora v Speaker*



of the Senate [2014] eKLR, *Republic v Magistrates Court, Mombasa; Absin Synegy Limited (Interested Party)* (Judicial Review E033 of 2021) [2021] KEHC 10 (KLR), SC Pet. No. 4 of 2022 as Consolidated with Pet. No. 6 and 8 of 2022 *Edwin Harold Dande & 3 Others v DPP & 2 others, Republic v Attorney General & Another; Kathenge & 3 others (Interested Parties); Musyoka Kamusina (Exparte) (Environment and Land Judicial Review Case E002)* [2022] KEELC 2555 (KLR), *Charles Njogu Lofty v Bedouin Enterprises Ltd* (2005) Eklr, *Republic v National Land Commission & Another Ex-parte Farmers Choice Limited* (2020) eKLR, *Republic v National Hospital Insurance Fund Management Board Ex-parte Patanisho Maternity and Nursing Home* [2019] eKLR *Jared Benson Kangwana v. Attorney General*, Nairobi HCCC No. 446 of 1995, *Taib A. Taib v. The Minister for Local Government & Others* Mombasa HCMISCA. No. 158 of 2006, R (H). v Ashworth Special Hospital Hospital Authority (2003) 1WLR 127, Joyce Cherop Kaspondoy & 609 others v Kenya Power and Lighting Company [2019] eKLR, Daniel N Mugendi v Kenyatta University & 3 others [2013] eKLR (Coram: Nambuye, Mwera & Kiage, JJ.A), United States International University (USIU) v. Attorney General [2012] eKLR, Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR para 68, *Republic v Magistrates Court, Mombasa; Absin Synegy Limited (Interested Party)* (Judicial Review E033 of 2021) [2022] KEHC 10 (KLR) (24 January 2022) (Judgment), Kalpana Rawal & Others v Judicial Service Commission & Another (2016) eKLR, Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696 at page 700, County Government of Kirinyaga v African Banking Corporation Ltd [2020] eKLR, Wringles Company (East Africa) –v- Attorney General & 3 Others [2013] Eklr, Geoffrey Muthinja & another v Samuel Muguna Henry & 17756 others [2015] eKLR, Republic v Kenya Revenue Authority & Another Ex-parte Tradewise Agencies [2013] eklr, Pastoli v. Kabale District Local Government Council and Others [2008] 2 EA 300, Rhoda Wanjiku Kibunja v R.O. Mbogo, Resident Magistrate, Children’s Court, Milimani & another [2019] eKLR, Republic v Ministry of East African Community, Labour & Social Protection & 4 others Exparte Umoja Children’s Home & another [2019] eKLR, (P.Nyamweya), Communication Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 others, [2014] eKLR (Coram: Mutunga, CJ & P; Rawal, DCJ & V-P; Tunoi, Ibrahim, Ojwang, Wanjala, Njoki, SCJJ.)

Case for the 2nd Respondent

10. The 2nd respondent opposes the suit vide a Replying Affidavit dated 6.9.2022 sworn by its director, one Antony Njoroge Gachiri. He contends that they entered into a lease agreement dated 20.9.2020 with the Exparte Applicant in which the Exparte Applicant leased out one acre portion of the premises known as LR. No 4985/1 to them (2nd respondent) for a period of 20 years. The agreed monthly rent was ksh. 438,596. The specific use of the land was to be a petrol station and other ancillary services including a tyre centre, car wash, service bay, a restaurant and a snack shop.
11. That while the 2nd respondent complied with the terms of the lease, the Exparte Applicant has failed to accord them peaceful occupation and has obstructed them with all manner of demands, threats, disruptions and intimidation of their workers, of which the 2nd respondent established that the Exparte Applicant intended to bar them from proceeding with their business because they (the Exparte Applicant) had engaged a 3rd party with similar arrangements but with a higher rent. This prompted the 2nd respondent to file the suit E13301 of 2021 seeking injunctive orders against the Exparte Applicant.
12. The 2nd respondent contends that the Judicial Review is a remedy concerned with decision making process, thus this court cannot sit as a court of appeal against a decision made by a lower court in a Judicial review matter.



13. The submissions of the 2nd respondent are dated 21.6.2023 where they similarly reiterate the issues raised in their Replying Affidavit to the effect that the subject matter was the lease document where the monthly rent was ksh.438,596. In support of their case, the 2nd respondent has relied on the following authorities; Ila & Han & Another V Bishop Peter Kaga [2020] eKLR, Selectica Limited v Gold Rock Development Limited (Environment and Land Appeal 63 of 2019) [2022], Anne Lokidor v Nairobi City County [2019] eKLR, Charles Njogu Lofty –v- Bedouin Enterprises Ltd [2005] eKLR, (Omolo, Waki & Deverrrel, JJA) Charles Njogu Lofty –v- Bedouin Enterprises Ltd (supra), Isaac Ngiri Mwangi v Veronica Wangari Isaac & Others [2013] eKLR, Peter Gitau Kariuki & Another v Nelson Gitabi Wanuna [2021] eKLR, David Mwiyei v Julius Musyoka Kilya [2017] eKLR, Sharrif Abdi Hassan v Nadhif Jama Adan [2006] Eklr, Locabail International Finance Ltd & Anor v Agro Export and others [1986] All ER 907; Kenya Breweries Ltd v Washington Okeyo Ndungu Boro v Peter K Njuguna & another [2002] eKLR, Famy Care Limited v Public Procurement Administrative Review Board & another & 4others [2012] eKLR, Peter Gitau Kariuki & another v Nelson Gitahi Wanuna (supra), Anne Lokidor v Nairobi City County [2019] Eklr, Republic v Chief Magistrate Court of Nakuru & another Ex-arte Charles Njihia Nganga, Kenya Breweries Ltd & another v Wahington O. Okeyo [2002] eKLR, Charles Njogu Lofty –v- Beouin Enterprises Ltd, Civil Appeal No. 253 of 2003 Diocese of Marsabit Registered Trustees –v- Technotrade Pavillion Ltd [2014] eKLR, Kenya Broadcasting Corporation –v- National Authority for the Campaign Against Alcohol and Drugs Abuse [2015] eKLR, Niazsons (K) Ltd –v- China Road & Bridge Corporation Kenya [2001] eKLR, Bedouin Enterprises Ltd –v- Charles Lofty and Joseph Mungai Gikonyo T/A Garam Investments, Eunice Soko Mlagui –v- Suresh Parmar & 4 others [2017] eKLR, Technotrade Pavilion Limited [2014] eKLR and Midroc Water Drilling Co. Ltd-v-National Water Conservation & Pipeline Corporation [2015] eKLR.
14. The 1st Respondent did not file any documents in this suit.

Determination

15. The issue falling for determination is whether this court should allow the Judicial Review orders sought by the Exparte Applicant so as to quash the decisions of the trial court delivered on 11.2.2022 and on 1.4.2022.
16. At the outset, I have to set out the scope and purpose of judicial review proceedings of which I invoke the Court of Appeal decision in Municipal Council of Mombasa v Republic and another [2002] eKLR where it was stated as follows:

“Judicial Review is concerned with the decision making process and not the merits of the decision itself the court would only be concerned with the process leading to the making of the decision”.
17. In the case of Pastoli v Kabale District Local Government Council and others [2008] 2 E.A 300 the court stated as follows:

“in order to succeed in an application for judicial review the applicant has to show that the decision or act complained of is tainted in illegality irrationality, and procedural impropriety”.
18. I find that in paragraph 8 – 18 of its Replying Affidavit, the 2nd Respondent has given a step by step account albeit in a verbose manner the events leading to the issuance of the orders of 11.2.2022 and 1.4.2022. The Exparte Applicant has indicated at paragraph 15 of its verifying Affidavit that they were aggrieved by the ruling of 11.2.2022 in which their preliminary objection challenging the jurisdiction



of the court was dismissed. That this is what prompted them to file the application dated 21.2.2022 again challenging the jurisdiction of the magistrates court.

19. In the case of Rhoda Wairimu v R.O. Mbogo Resident Magistrate Children’s Court Milimani and Another [2019] eKLR cited in National Security Fund v Sokomania Ltd and another [2021] eKLR the court stated as follows:

“The power of the court to Review an administrative action is extraordinary. It is exercised sparingly, in exceptional circumstances where illegality, irrationality or procedural impropriety has been proved. This is the power the applicant is invoking in this case. However, as noted earlier, the impugned decision is a judicial function, which to me is not amenable to judicial review but is appealable to the High Court. In fact, the reasons cited by the applicant are grounds for appeal as opposed to grounds for judicial review”. Emphasize added.

20. The court in National Security Fund v Sokomania Ltd and another (supra) went on to state that;

“I am in agreement with the 1st Respondent that the impugned orders of the 2nd Respondent are not within the purview of judicial review. The orders complained of by the Applicant were made by the 2nd Respondent in exercise of its judicial function conferred by law. While making the impugned orders, the 2nd Respondent was not acting as an administrative body but as a judicial body. The 2nd Respondent’s decision was therefore judicial rather than administrative. I am of the view that orders made by a Magistrate’s Court in exercise of its judicial function are not amenable to judicial review as administrative action.”

21. Similarly in the case at hand, the impugned decisions delivered by the trial court on 11.2.2022 and on 1.4.2022 are judicial decisions, of which recourse thereof was to lodge an appeal. As already captured in the body of this ruling, the Exparte Applicant admits to having been aggrieved by the ruling of 11.2.2022 and hence opted to file an application where it was raising similar issues as those raised in their earlier preliminary objection. Thus the filing of the application of 21.2.2022 was itself irregular!.

22. To this end, the court cannot delve into the merits of the decisions of the trial magistrate in this judicial review suit.

23. I must also point out that prayer no.3 sought by the Exparte Applicant in the substantive Motion would be tantamount to validating the alleged termination notice of the lease agreement, yet this is a judicial review matter where the court should not go into the merits of the dispute.

24. As I pen off, I must point out that the parties ought to embrace the art of brevity, such that they need not flood this court with countless authorities to buttress their case.

25. In the end, I find that this judicial review motion is not merited, the same is hereby dismissed with costs to the 2nd respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Muiruri holding brief for C. Kanjama S.C for Exparte Applicant



Wangari holding brief for Gachie Mwanza for 2nd Respondent

