



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISCELLANEOUS CIVIL APPLICATION NO. 62 OF 2019

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN,

RENT RESTRICTION TRIBUNAL.....RESPONDENT

AND

MARTIN MASAI MBATI.....INTERESTED PARTY

EX PARTE:

DINAH DEY DIPONDO

JUDGMENT

1. The *ex parte* applicant has moved the court by a Motion dated 20th May 2019, seeking:-

(a) an order of *certiorari* to bring to court and quash the *ex parte* orders made by the Chairman of the Rent Restriction Tribunal in Rent Restriction Case No. 42 of 2019 at Kakamega and all consequential orders;

(b) an order of prohibition to prohibit the Officer Commanding (OCS) the Kakamega Police Station from harassing, intimidating, visiting and arresting her or her agent in the guise of enforcing an order made in Rent Restriction Case No. 42 of 2019 on 6th May 2019; and

(c) an order of prohibition to prohibit the respondent from hearing Rent Restriction Case No. 42 of 2019.

2. The factual background to the application is set out in the statement of facts dated 16th May 2019 and affidavit sworn to verify that statement, on even date, by Dinah Dey Dipondo. The *ex parte* applicant had been a landlady of the interested party with respect to premises standing on Isukha/Sherere/2972, where the rent per month was Kshs. 12, 000.00. The interested party allegedly fell into rent arrears, and the *ex parte* applicant instructed auctioneers to distraint the premises to recover the rent arrears. It would appear that on 3rd May 2019, the interested party moved the Rent Restriction Tribunal in Rent Restriction Case No. 42 of 2019, on grounds that *ex parte* applicant had denied him access to the rented premises, and he sought an order to compel the reopening of the premise and orders for police assistance in that regard. The orders were granted on 6th May 2019, for the *ex parte* applicant to reopen the premises and reinstate the interested back in the premises, to restrain her from interfering further with the interested party, for the interested party to continue paying rent as usual and the police to assist to ensure compliance with the orders.

3. It is the orders of the tribunal of 6th May 2019 that prompted the filing of these judicial review proceedings. She complains that the tribunal exceeds its jurisdiction by entertaining a dispute over rent which exceeded the statutory limit of Kshs. 2, 500.00 per month. She further complains that the said orders were made without her being given an opportunity to be heard. She states that it was the interested party who provoked her to action by failing to pay rent and locking the premises. She avers that the interested party had long been evicted, and he was, therefore, no longer a tenant, and the orders were served long after the eviction.

4. The principal remedy sought is that of *certiorari*. *Certiorari* is available in cases where a tribunal or entity acts in excess of its jurisdiction or acts *ultra vires*. The Rent Restriction Tribunal is a creature of the Rent Restriction Act, Cap 296, Laws of Kenya. The scope of the Act is set out in section 2 thereof, which provides as follows:

“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.”*

5. The complaint herein is that the tribunal’s jurisdiction is restricted to disputes where the monthly rent is Kshs. 2, 500.00. In the instant case, the monthly rent was Kshs, 12, 000.00. Clearly, the tribunal acted in excess of its jurisdiction, and its decision is liable for recall for the purpose of being quashed.

6. Prohibition is sought to bar assumption of unlawful or excess jurisdiction by a tribunal or other body. Two prohibitory orders are sought herein. The first is against the police and the other against the tribunal. The order against the police is obviously not available as the police have not been named as a respondent. Orders cannot possibly issue against a person or entity that has not been named as a party to the dispute. There are right to hearing, fair hearing and fair trial issues around that. It would appear that the order against the tribunal is available to the extent that the tribunal is exercising jurisdiction over the matter when it has no such jurisdiction.

7. In the end, orders shall issue in terms of prayers 1 and 3 of the Motion dated 20th May 2019. The *ex parte* applicant shall have the costs of the suit.

DATED, SIGNED and DELIVERED at KAKAMEGA THIS 31ST DAY OF OCTOBER, 2019

W. MUSYOKA

JUDGE