



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

JR APPLICATION NO. E05 OF 2021

WANGUI BEATRICE KARIUKIAPPLICANT

VERSUS

RENT RESTRICTION TRIBUNAL NAIROBI1ST RESPONDENT

KENNETH NDUNGU KABUE2ND RESPONDENT

JUDGMENT

1. Pursuant to leave granted on 18th February 2021, the *ex-parte* applicant filed the substantive Judicial Review Motion dated 8th March 2021 seeking :

i. An order of certiorari to remove into the High Court for purpose of its quashing the ex-parte orders by the Honourable Chairman Rent Restriction Tribunal in Nairobi Rent Restriction Case No. 1774 of 2020 made on 18th January 2021 whereby it was adjudged that:

a) The 2nd Respondent's application dated 15th December 2020 is certified as urgent and heard ex parte in the first instance.

b) The applicant is ordered to release to the plaintiff/ respondent motor vehicle registration number KBY 549Y.

c) The applicant, her servants, employees and or agents are restrained from attaching, selling, disposing of and/or in any other manner dealing with the plaintiff/2nd respondent's goods, evicting, harassing him and / or in any other manner interfering with the tenancy pending the hearing of the application interparties.

d) The plaintiff/ 2nd respondent is to continue paying rent as usual.

e) The OCS Karuri police station to ensure compliance of the orders.

ii. An order of prohibition prohibiting the prosecution of Restriction Case No 1774 of 2020 from further proceeding with the hearing and determination of the suit.

iii. A declaration that the ex parte orders by the Honourable Chairman Rent Restriction Tribunal in Rent Restriction Case No 1774 of 2020 was and is invalid (ultra vires) and void and of no effect.

iv. Further or in the alternative damages arising from the matters herein and interest thereon.

v. If leave to apply is granted, a direction that the hearing of the application for judicial review be expedited.

vi. An order for costs.

2. The application is premised on the grounds elucidated on the face of the substantive motion, statutory statement of facts, supporting affidavit and the verifying affidavit sworn by Wangui Beatrice Kariuki dated 8th March 2021. The applicant averred that the 2nd respondent was a tenant at her premises LR No Kiambaa/Ruaka/2680 Flat No. 3G where the monthly rent was Kshs. 14,000 as of 2020. As at October 2020, the 2nd respondent was in rental arrears of Kshs. 721,000.

3. As such, the proceedings and ex parte orders issued on 18th January 2021 in **Nairobi Rent Restriction Case No. 1774** of 2020 were null

and void for want of jurisdiction since Section 2 of the **Rent Restriction Act (Cap 296)** limits the Tribunal's jurisdiction to tenancy disputes where monthly rent did not exceed Kshs 2,500. The applicant also indicated that the 2nd respondent was still in possession of the premises and was seeking enforcement of the RRT orders.

4. The Respondents were to file and serve their responses by 30th December 2021, while their submissions were to be filed by 30.1.2022. None were filed. The matter has therefore proceeded as an undefended suit.

5. The question for determination is ***whether the tribunal had jurisdiction to hear and determine the suit as well as to give the orders of 18.1.2021.***

6. The parameters of Judicial Review have been set out in several judicial authorities one of them being the Court of Appeal case of **Municipal Council of Mombasa v Republic & another [2002] eKLR** where it was stated that:

“... Judicial review is concerned with the decision -making process, not with the merits of the decision itself... 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 made (sic) 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 he 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 there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review...”

7. The Applicant claimed that the application in **RRT 1774 of 2020** and subsequent orders dated 18th January 2021 were made *ex parte* without according him an opportunity for rejoinder. However, the orders were not given in finality as they were given awaiting inter partes hearing. I find nothing wrong in the issuance of *ex-parte* orders.

8. On the question of jurisdiction the Applicant averred that as at 2020 the rent payable for her premises was Kshs. 14,000 though in 2013 when the 2nd Respondent leased the house, the rental charge was Kshs. 11,000. Therefore, did the tribunal have jurisdiction to determine the dispute?

9. Section 2(1) of the **Rent Restriction Act** provides:

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.

10. This court has looked at annexure marked **BWK1**, which albeit blurry on the name of the lessee indicates the following on the issue of rent under clause 5: ***The monthly rental will be Kshs. 11,000 per month...***

11. Section 5(1)(a) of the **Rent Restriction Act** further stipulates:

(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;

12. It is noted from the Court record that the Tribunal had not assessed the standard rent and on 18th February 2021, this court issued orders that:

2) The Tribunal is nonetheless at liberty to assess the standard rent of the suit premises in terms of the legal framework in the Rent Restriction Act and furnish the parties with a copy of the assessment.

13. There is no evidence on record to demonstrate whether the order was served and effected.

14. There being no evidence of the standard rent assessment undertaken by the tribunal, then any action taken by the Tribunal without jurisdiction or exceeding jurisdiction is thus illegal and unconstitutional. Thus the decision of RRT is ultra vires for want of jurisdiction. In the circumstances, I find that this suit is merited and is allowed in terms of prayers (i), (ii) and (iii) in the substantive motion. The parties are at liberty to table the dispute before a forum of competent jurisdiction. Each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

IN THE PRESENCE OF:-

NEREAH FOR THE APPLICANT

2ND RESPONDENT PRESENT IN PERSON

COURT ASSISTANT: EDDEL BARASA