REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 287 of 2009

IN THE MATTER OF: AN APPLICATION FOR A JUDICIAL REVIEW ORDER OF CERTIORARI BY WESTLANDS SUNDRIES LIMITED, MEAT MASTERS LIMITED AND DO IT YOURSELF LIMITED

IN THE MATTER OF: THE LANDLORD AND TENANT (SHOPS, HOTELS AND CATERING ESTABLISHMENTS) ACT, CHAPTER 301 LAWS OF KENYA

AND

IN THE MATTER OF: THE BUSINESS PREMISES RENT TRIBUNAL COMPLAINTS NOS. 111, 112 & 113 (CONSOLIDATED) OF 2008

REPUBLIC OF KENYA

VS

BUSINESS PREMISES RENT TRIBUNAL.....1ST RESPONDENT

WESTLANDS TRIANGLE PROPERTIES LIMITED.....2ND RESPONDENT

EX-PARTE

WESTLAND SUNDRIES LIMITED.....1ST APPLICANT

MEAT MASTERS LIMITED.....2ND APPLICANT

DO IT YOURSELF LIMITED.....3RD APPLICANT

JUDGEMENT

INTRODUCTION

1. By a Notice of Motion dated 2nd June 2009 filed in this Court on 3rd June 2009, the *ex parte* applicants herein, **Westlands Sundries Limited**, **Meat Masters Limited**, **Do It Yourself Limited**, seek the following orders:

1. **That an Order of Certiorari do issue to remove to the High Court and quash the Ruling and Order of the business Premises Rent Tribunal dated and issued on 14th November 2008.**

2. **That costs of and incidental to this application be awarded to the Applicant.**

EX PARTE APPLICANT'S CASE

3. The application is based on the Statutory Statement filed on 13th May 2009 and the verifying affidavit sworn by **Noorudin Manji**, a Director of the 1st Applicant Company on 12th May 2009.

4. According to the applicants the applicants are protected and have been protected tenants with shops on the premises known as LR No. 209/6368/4 for more than thirty years. The applicants in February 2008 filed complaints before the Business Premises Rent Tribunal (hereinafter referred to as the Tribunal) in BPRT Cases Nos. 111,112 and 113 of 2008 which were consolidated by the said Tribunal on 3rd April 2008. However, during the pendency of the said causes the 2nd Respondent filed HCCC No. 112 of 2008 challenging the jurisdiction of the Tribunal and in ruling and order dated 30th April 2008 **Lady Justice Ang'awa** dismissed the said application and held that the applicants were protected tenants and that the Tribunal had jurisdiction to hear and determine the complaints filed before it. The said complaints were consequently fixed for hearing on 12th November 2008 before the Tribunal. However on the said date when the matter came up for hearing, the 2nd Respondent filed a preliminary objection questioning the Tribunal's jurisdiction and in a ruling delivered thereon on 14th November 2008, the Tribunal overruled the said High Court decision and dismissed the applicants' complaints. In the applicants' view the said decision in so far as it amounted to an appeal against the decision of the High Court was unlawful and an improper exercise of the statutory powers of the Tribunal hence the Tribunal acted *ultra vires* and without jurisdiction. Consequently the 2nd respondent proceeded to extract an order which was at variance with the Tribunal's ruling and evicted the applicants on 17th November 2008. On an application made by the applicants, the applicants were reinstated by to the suit premises and though there was a notice of appeal filed against the order of reinstatement, no appeal was filed.

THE 1ST RESPONDENTS' CASE

5. The 1st respondent opposed the application by way of an affidavit sworn by its Chairperson, **Diana Mochache**, on 23rd January 2012. According to the deponent, the applicants filed separate references against the 2nd respondent which were later consolidated. According to her although **Lady Justice Ang'awa** made a finding that the *ex parte* applicants were protected tenants, she was not bound by that decision on the facts as she had to investigate her own facts and the facts as presented before her revealed that the ex parte applicants were tenants of the head tenant without the consent of the 2nd respondent. The record, according to her revealed that the head tenant surrendered the premises upon the expiry of the lease leaving the applicants in occupation who refused to vacate and filed the references. Since the tenants' rights were only protected with regard to their relationship with the head tenant who had vacated the tribunal had no jurisdiction to protect them hence its ruling that there was no tenancy relationship between the ex parte applicants and the 2nd respondent.

THE 2ND RESPONDENTS' CASE

6. In opposition to the application the 2nd respondent on 8th March 2012 filed a replying affidavit sworn by **Mukesh Shah** a Director of the 2nd respondent on 8th March 2012. According to the deponent, the 2nd respondent is wrongly joined in these proceedings since judicial review proceedings being a public law matter the 2nd respondent is not in a position to take any public decision for which judicial review orders can be issued. According to him whereas the 2nd respondent is the registered proprietor as lessee of the suit premises he is unaware of the existence of any tenancy agreement between the applicants and the 2nd respondent hence the applicants cannot claim to be protected tenants. Since the 3rd applicant moved out of the suit premises following notice to vacate, it is deposed that it was not in the premises at the time of the commencement of the matters before the Tribunal while none of the applicants have any approved leases. According to him the tenants filed separate references before the Tribunal and further there no finding by **Lady Justice Ang'awa** that the applicants were protected tenants. It is deposed that since there was no evidence that the applicants had been lawful tenants in the premises so as to make the claims they intended to make before the Tribunal, the Tribunal found as it was empowered to do under section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (hereinafter referred to as the Act) that it had no jurisdiction to deal with the applicants' reference. In his view, the onus is on the party alleging protection in a tenancy agreement to prove lawful occupation of which there was no evidence in this case. According to him the Tribunal did not overrule the High Court but only determined the preliminary points of law raised in the Preliminary objection and exercised its jurisdiction as required by law hence there is no basis for judicial review of the Tribunal's powers. Since the applicants' have not appealed the decision of the Tribunal, it is contended that it is not open to them to commence these proceedings. The deponent states that he is unaware of any forceful eviction or any unlawful activities conducted by the 2nd respondent and in any event such a claim is irrelevant to these proceedings hence no leave ought to have been granted to deal with such allegation. Although an appeal against the decision of **Lady Justice Sitati** is intended, the proceedings are yet to be furnished. In light of the delay in prosecuting these proceedings and as the applicants did no exercise their appellate option, it is deposed that it is not in the interest of justice to grant the orders sought.

SUBMISSIONS IN SUPPORT OF THE *EX PARTE* APPLICANT'S APPLICATION

7. While reiterating the contents of the Motion, the Statement and the affidavits, the *ex parte* applicants submitted that they were protected tenants pursuant to section 2 of the Act since they had been tenants in the suit premises without a tenancy agreement reduced to writing for various periods exceeding 5 years. Relying on section 5(1) of the Act and Nairobi Housing **Development Ltd vs. Ridge Corner Bar Ltd [1979] 1 EA 108**, it is submitted that although the lease of the Head-Tenant on the premises had lapsed, this did not amount to the termination of the controlled tenancy because the ex parte applicants were tenants by operation of law and not under contract.

8. It is further submitted that the Tribunal though statutory is inferior in jurisdiction and bound by the decisions of the High Court and since the High Court had already determined that there was a landlord and tenant relationship between the applicants and the 2nd respondent the issue of jurisdiction was not open for determination by the Tribunal since the Tribunal had no jurisdiction to overrule the High Court hence this Court has jurisdiction to review the 2nd Respondent's decision based on **Pritam vs. Ratilal and Another [1972] EA 560 at 562**; **Abu Chiaba Mohamed vs. Mohamed Bwana Bakari & 2 Others Civil Appeal No. 238 of 2003**; **Cassel & Co. Ltd vs. Broome & Another [1972] AC 1** and **Rift Valley Sports Club vs. Patrick James Ocholla [2005] eKLR**.

9. In filing the preliminary objection it is submitted based on **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696 at 701** the 2nd Respondent was deemed to have admitted the facts as presented in the complaint and the Tribunal had no jurisdiction to investigate the facts.

10. Citing **Re Hebtulla Properties Ltd [1979] KLR 95**, it is submitted that the right of appeal does not extend to an order made on a complaint. Consequently on the authority of **Kenya National Examinations Council vs. Geoffrey Gathegi & 9 Others Civil Appeal No. 266 of 1996** and **Republic vs. Funyula Land Disputes Tribunal & 2 Others ex parte Hannington Pamba [2005] eKLR** it is submitted that only an order of *certiorari* can quash a decision already made without or in excess of

jurisdiction or in breach of the rules of natural justice and that when a Tribunal acts ultra vires its jurisdiction the Court is entitled to quash it.

11. To allow the Tribunal's decision to stand, it is contended would not only embarrass the High Court but ridicule the doctrine of *stare decisis* that has been a cornerstone of the common law for centuries but also impede the rule of law hence the orders sought should be granted.

1ST RESPONDENT'S SUBMISSIONS

12. On the part of the respondent, it is submitted that whereas the ex parte applicants were sub-tenants of the head lessor, there was no privity of contract between the ex parte applicants and the 2nd respondent and there was no evidence that the 2nd respondent was aware of the sub-tenancy of the ex parte applicants and no evidence to that effect was exhibited. The evidence on record was to the effect that the head tenant had already vacated the premises after the expiry of the lease period and none of the applicants paid rent to the 2nd respondent and on the authority of **New Stanley Hotel Ltd vs. Arcade Tobacconists Limited (No. 2) [1986] KLR 760** and **Martin M Odhiambo t/a E press Insurance Services vs. Marshalls EA A Ltd & Another [2005] eKLR** it is submitted that there was no privity of tenancy between the applicants and the 2nd respondent. Since the head tenant had vacated and there was no permission to sublet the ex parte applicants were in illegal occupation of the premises and were hence not protected by section 5(1) of the Act.

13. It is submitted that under section 12 of the Act the Tribunal had the power to determine the issue whether or not the tenancy was controlled tenancy and the determination of that issue came by way of preliminary objection on a question of jurisdiction raised by the 2nd respondent and based on the case of **The Owners of Motor Vessel "Lillian S" vs. Caltex Kenya Ltd [1989] KLR 1** such issue must be determined first.

14. It is submitted that the contention by the applicants that their complaints were dismissed without being afforded a hearing was not only preposterous but also fallacious since both parties were heard on the objection. It is the 1st respondent's submission that its decision was well within the powers conferred upon it by law and was not *ultra vires* and denies that it is an inferior court based on the decision in **National Drycleaners Ltd & Aother vs. Ndune [1987] KLR 565** and **Vibhakar vs. Parani & Others HC Misc. Civil Case No. 106 of 1983.**

15. Therefore whereas the ex parte applicants were held to be protected tenants of the Head lessor, they were not held to be so in relation to the2nd Respondent and the 1st Respondent was therefore not bound by that decision on facts as it related to a 3rd Party. Hence the Tribunal investigated its own facts as they emerged and came to a decision that there was no contractual relationship between the applicants and the 2nd respondent. The Court, it is submitted, ought to find no merit in the instant application and dismiss the same with costs to the 1st Respondent.

2ND RESPONDENT'S SUBMISSIONS

16. On behalf of the 2nd respondent, it is submitted that the 2nd respondent was wrongly joined in this judicial review application since being a public law matter, the 2nd respondent is not in a position to take any public decision for which judicial review orders can be issued. Further the impugned decision was made by the 1st respondent and not the 2nd respondent and the 2nd respondent was never involved in the making of the said decision hence the proceedings against the 2nd respondent cannot stand.

17. On merits it is submitted that **Lady Justice Angawa** did not hold that in respect of the applicants and the 2nd respondent the applicants were protected tenants hence the applicants are misinterpreting the said decision. While reiterating the contents of the replying affidavit, it is submitted that the 1st Respondent did not go to the content of the High Court ruling and hence the orders sought herein should

not be granted.

DETERMINATIONS

18. The first issue that I wish to deal with is the effect, if any, of the joinder of the 2nd respondent in these judicial review proceedings. It is correct as submitted on behalf of the 2nd respondent that judicial review application is a public law matter hence private individuals are generally not expected to be respondents in such proceedings. In **Peter Okech Kadamas vs. Municipal Council of Kisumu Civil Appeal No. 109 of 1984 [1985] KLR 954; [1986-1989] EA 194, Hancox, JA** as he then was held:

"The order of judicial review is only available where an issue of "public law" is involved but the expressions "public law" and "private law" are recent immigrants and whilst convenient for descriptive purposes must be used with caution, since the English Law traditionally fastens not so much upon principles as upon remedies. On the other hand to concentrate upon remedies would in the present context involve a degree of circuitry or levitation by traction applied to shoestrings, since the remedy of certiorari might well be available if the health authority is in breach of a "public law" obligation but would not be if it is only in breach of a "private law" obligation."

19. In **Bahajj Holdings Ltd. vs. Abdo Mohammed Bahajj & Company Ltd. & Another Civil Application No. Nai. 97 of 1998,** the Court of Appeal held that *Certiorari* covers every case in which a body of persons of a public as opposed to private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially.

20. It follows that it was therefore not in order to join the 2nd respondent in these proceedings as a respondent. It could, however, be joined as an Interested Party since Order 53 rule 3(2) of the Civil Procedure Rules provides:

The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all parties to the proceedings.

21. However, did the joinder of the 2nd respondent in these proceedings render the proceedings incompetent? An issue as to the effect of misjoinder in judicial proceedings was the subject of determination in **Republic Ex Parte the Minister For Finance & The Commissioner of Insurance as Licensing and Regulating Officers vs. Charles Lutta Kasamani T/A Kasamani & Co. Advocate & Another Civil Appeal (Application) No. Nai. 281 of2005** in which the Court of Appeal stated:

"Suffice it to say that a defect in form in the title or heading of an appeal, or a misjoinder or non-joinder of parties are irregularities that do not go to the substance of the appeal and are curable by amendment...Is the form of title to the appeal as adopted by the Attorney General in this matter defective or irregular? We think not, as we find that it substantially complies with the guidelines set out by this Court".

22. It follows that the misjoinder of the 2nd respondent in these proceedings did not render the proceedings incompetent.

23. The second issue for determination is whether the Business Premises Rent Tribunal is an inferior Tribunal to the High Court for the purposes of judicial review. In my view there is a misconception that judicial review jurisdiction stems from the Law Reform Act. In my view judicial review jurisdiction is based on Article 165(6) and (7) of the Constitution which provide:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

24. Superior Courts are provided for in Article 162 of the Constitution which states:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

25. It is clear from the foregoing that the Business Premises Rent Tribunal is not a Superior Court and under the provisions of Article 165(6) is subject to the supervisory jurisdiction of the High Court since it no doubt exercises a judicial or quasi-judicial function.

26.Article 169(1) of the Constitution on the other hand provides that:

(1) The subordinate courts are—
(a) the Magistrates courts;
(b) the Kadhis' courts;
(c) the Courts Martial; and

(d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).

27. I have no doubt at all in my mind that the subject Tribunal is a Tribunal established by an Act of Parliament and therefore falls squarely within the definition of a subordinate Court and therefore amenable to the supervisory jurisdiction of the Court. Being a subordinate court, the Tribunal is, by virtue of the doctrine of *stare decisis*, bound by a decision of the High Court unless there are conflicting decisions in which case the lower court would be bound to follow either or in the rare occasions when the decision is clearly *per incurium*. As was stated by **Omolo, JA** in **Abu Chiaba vs. Mohamed Bwana Bakari** (supra):

"The learned judge of the High Court had no jurisdiction to over-rule a decision of the Court of Appeal even if she disagrees with the decision and the comments in her judgement must be ignored as having been made without jurisdiction and in violation of the well-known doctrine of precedent. Like all other judges in her position, under the doctrine of precedent, she is bound by the decision of the Court of Appeal even if she may not approve of a particular decision and any attempts to over-rule or side-step the court's decisions can only result in unnecessary costs to the parties involved in the litigation."

28. This position was restated in **Cassell & Co. Ltd vs. Broome & Another [1972] AC 1072** in which the Court held:

"The fact is and I hope it will never be necessary to say so again, that in the hierarchical system of the courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of higher tiers. Where decisions manifestly conflict, the decision in *Young vs. Bristol Aeroplane Co. Ltd [1944] KB 718* offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom. Even this House, since it has taken freedom to review its own decisions, will do so cautiously".

29. The rationale for this is to be found in **Musinga, J's** judgement (as he then was) in **Rift Valley Sports Club vs. Patrick James Ocholla** (supra) in which the learned Judge expressed himself as follows:

"The learned magistrate trashed such a forceful decision of the Court of Appeal by failing to give it any consideration at all and proceeded to grant an injunction in a ruling which was devoid of any

legal reasoning. A judicial decision must be based on proper legal grounds but never on feelings alone, no matter how strong such feelings may be. The doctrine of *stare decisis* is very important in our judicial system and must be respected as much as possible otherwise judicial decisions would be chaotic and unpredictable. It was unfortunate that the learned magistrate totally disregarded a five judge binding decision without citing any reasons for doing so."

30. One cannot bring this discussion to an end without referring to the wise words of **Sir Charles Newbold** in the case of **Dodhia vs. National & Grindlays Bank Limited and Another [1970] EA 195.**The learned President of the East African Court of Appeal had this to say:

"I accept that a system of law requires a considerable degree of certainty and uniformity and that such certainty and uniformity would not exist if the courts were free to arrive at a decision without regard to any previous decision".

31. Having said that the next issue for determination is the effect of the decision by **Lady Justice Ang'awa** in HCCC No. 112 of 2008. In her decision, the learned Judge held inter alia as follows:

"The plaintiff in this case claim that all the three defendants are illegal sub-tenants. The law states otherwise. That *whether they are illegal or not the plaintiff is subjected to the jurisdiction of the Business Premises Rent Tribunal to determine this issue*. [Emphasis mine). **The sub-tenants were able to show that they had dealing with the landlord they knew Rosemary Wanja Njau whose tenancy had since expired. That was sufficient evidence to prove that they are protected tenants…In this case the defendants relationship with the former landlord appears to have been controlled. They were so heard at the Tribunal. I accordingly ruled that the application for injunction and orders to stay the tribunal cases be and is hereby rejected. I order that this High Court case be stayed. That the proceeding before the Tribunal in case 111/08, 112/08 and 113/08 commence for hearing".**

32. In my view the Judge was clear in her mind that the matter was properly within the jurisdiction of the Tribunal and ought to be determined by the Tribunal. If she had been of an otherwise view I do not think she would have stayed the proceedings before her and directed the matter to proceed before the Tribunal. The 2nd interested party herein went to Court seeking orders of injunction based *inter alia* on the ground that the applicants were not the 2nd respondent's tenants. According to the 2nd respondent, the Tribunal cases ought to have been terminated for lack of jurisdiction. The Court was clearly alive to the issue of the Tribunal's jurisdiction and by not granting that order by virtue of explanation 5 to section 7 of the Civil Procedure Act which provides that a relief claimed in a suit, which is not expressly granted by decree shall, for the purposes of section 7 be deemed to have been refused, the 2nd respondent's prayer for a determination that the applicants were not its tenants is deemed to have been refused. In my view that explanation applies to orders as well and a relief sought in an application which is not expressly granted is similarly deemed to have been refused.

33. In her ruling on the preliminary objection, the learned Chairperson of the Tribunal held:

"In the present case, there is no relationship between the applicants and the respondents directly. The relationship existed between the applicants and the head tenant who surrendered his lease to the landlord. The head tenant gave notice to the applicants of his surrender, and the applicants never entered into any other arrangement with the respondents. There is no relationship between the parties whatsoever. It has been argued before me that the High Court had made a finding that there existed a controlled tenancy, and that finding otherwise would be tantamount to sitting on appeal of the High Court's findings. Under Cap 301, this Tribunal is supposed to investigate facts and arrive at its own decision. The High Court findings were not a finding on a matter of facts. Facts do change depending on the prevailing circumstances, and the facts that existed may not necessarily be the same as today. And if they are the same, then I am obliged to undertake my own independent investigations. That is what the Tribunal is supposed to do. To conduct our inquiry especially if the complaint is under section 12 as is the case herein. It is therefore incumbent on this tribunal to investigate first whether I have jurisdiction before taking any further steps in any matter. Such jurisdiction is premised on the existence of a controlled tenancy. Absent such a

tenancy, there cannot be jurisdiction. In any event, I am not seized of the issues that were before the High Court…In the end, I uphold the preliminary objection, dismiss the complaint vacate the orders granted on 11.2.2007 granting protection to the tenants. Costs to the tenant"."

34. With due respect to the Chairperson I must say that the reasoning in the above decision was convoluted and difficult to follow. Why should a Tribunal investigate the facts if the same have been investigated by the High Court and a finding made thereon assuming that the facts have not changed? Why was it necessary to award the tenant costs even after dismissing the complaint? Why was the matter dismissed and not struck out when the same was not heard on the merits? Was it in order for the Tribunal to make determinations on disputed facts in a preliminary objection? Since what is before me is not an appeal, I will not venture further into the merits of the decision.

35. However, it is clear that the Tribunal, and I must say contemptuously so, revisited the very issues that had been dealt with by the High Court. In my view what the High Court had decided was that the matters ought to be heard and determined on their merits. The Court found, rightly or wrongly, that there "**was sufficient evidence to prove that they** [read the applicants herein] **are protected tenants".** The 2nd respondent exercised its undoubted right and filed a notice of appeal. Instead of following up on the appeal, it decided to revisit the same issue before the Tribunal which unfortunately fell into that trap and upheld the objection.

36. In my view and in light of the foregoing the Tribunal ought not to have dismissed the complaints before it on the same ground that it had no jurisdiction but ought to have determined the dispute before it on its merits. By entertaining the said objection the Tribunal acted without jurisdiction or in excess of its jurisdiction. The said decision was similarly irrational, unreasonable and tainted with procedural impropriety in so far as it was purported that the Tribunal is not bound by a finding of fact by the High Court and the failure to adhere to the doctrine of *stare decisis.*

37. This Court was urged that in light of the length of time that has lapsed the Court ought not to grant the orders sought. The Court recognises the fact that *certiorari* is a discretionary remedy which a Court may refuse to grant even when the requisite grounds for its grant exist since the Court has to weigh one thing against another whether or not the remedy is the most efficacious in the circumstances obtaining and the discretion of the Court being judicial must be exercised on the basis of evidence and sound legal principles. Further that the court exercises a discretionary jurisdiction in granting prerogative orders and can withhold the gravity of the order where among other reasons there has been delay, where the a public body has done all that it can be expected to do to fulfil its duty or where the remedy is not necessary or where its path is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which application is made has already been realised. See **Anthony John Dickson & Others vs. Municipal Council of Mombasa Mombasa HCMA NO. 96 of 2000; Riachand Khimji & Co. vs. Attorney-General Civil Appeal No. 49 of 1972 [1972] EA 536** and **Republic vs. The Commissioner for Co-Operative Development & Kariobangi Housing & Settlement Co-Operative Society Limited Ex Parte David Mwangi & 15 Others Nairobi HCMCC No. 805 of 1990.**

38. In the present case I am not satisfied that the remedy sought by the applicants is not efficacious in the circumstances.

39. Before a conclude this judgement, I must point out that quite a number of issues that the parties dwelt in were either not properly grounds for judicial review, being factual matters or were not properly speaking the subject of this judicial review and are better left for the determination of the Court or Tribunal properly seized of the jurisdiction to make determination on matters of fact. As was held in **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001**:

"Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and

whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters…The court should not act as a Court of Appeal over the decider which 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."

ORDER

40. In the result I find merit in the Notice of Motion dated 2nd June 2009 which I hereby allow and I direct that an Order of Certiorari do issue to remove to the High Court and quash which I hereby do the Ruling and Order of the Business Premises Rent Tribunal dated and issued on 14th November 2008 in BPRT Case No. 54 of 2008. The applicants will also have the costs of the Motion.

Dated at Nairobi this day 12th day of March 2013

G V ODUNGA

JUDGE

Delivered in the presence of Miss Mutua for the Applicants and Miss Lukoba for the 1st Respondent.