REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 18 OF 2011

REPUBLIC.....APPLICANT

VERSUS

SPORTS STADIA MANAGEMENT BOARD.....RESPONDENT

EX-PARTE

MICHAEL KINYUA NJERU

WILLIS OTIENO MAGANDA

JUDGEMENT

Michael Kinyua Njeru and Willis Otieno Maganda the 1st and 2nd ex-parte applicants respectively are civil servants who have been allocated houses number F 103 and F 168 respectively by the Sports Stadia Management Board (the respondent) at Sports Stadia Estate, Moi International Sports Centre Kasarani. Through a letter dated 1st November, 2010 the respondent notified them that rent, would with effect from 1st February, 2011, be increased from Kshs.5,500/= to Kshs.8,500/= per month. They have now challenged the said decision and through the notice of motion dated 18th February, 2011 they seek an order of certiorari quashing the said decision. They also ask for an order of prohibition prohibiting the respondent from enforcing the decision to increase rent. It is the applicants' case that the decision to increase the rent is illegal, unprocedural and ultra vires. The applicants claim that the respondent's decision breached Article 47 of the Constitution and Section 11 of the State Corporations Act (cap 446).

The respondent opposed the application through grounds of opposition dated 3rd February, 2011 and the replying affidavit of the respondent's Chief Executive Officer Mr. Benjamin K. Sogomo sworn on 21st October, 2011. It is the respondent's case that it obtained the consents of the ministers of Housing and Finance before implementing the decision to increase the rent and the increment was thus lawful. The respondent contends that the relationship between it and the applicants is one of landlord-tenant and is therefore purely contractual and commercial and thus not amenable to judicial review.

In my view, there are three issues for consideration by the court namely:-

a) Whether the respondent's decision to increase rent was unlawful, unprocedural and ultra vires;

b) Whether the orders sought are available to the applicants; and

c) Who should meet the costs of the application?

As to whether the respondent's decision to increase the rent is unlawful, the applicants submitted that the said decision is ultra vires the provision of Section 11 of the State Corporations Act which provides that:-

"11. (1) Every state corporation shall cause to be prepared and shall, not later than the end of February in every year, submit to the Minister and to the Treasury for approval estimates of the state corporation's revenue and expenditure for the year accompanied by proposals for funding all projects to be undertaken by the state corporation, or the implementation of which will continue during the financial year to which those estimates relate.

(2) No annual estimates and proposals for funding projects shall be implemented until they have been approved by the Minister and with the concurrence of the Treasury."

Section 15 of the same Act provides that a state corporation, like the respondent, should be accountable in its activities. Pinning their argument on these provisions, the applicants submit that the respondent breached Section11 in that it never submitted for approval to the Minister and Treasury a proposal to increase rent. The respondent's reply to this argument is that it sought the approval of the Minister of Housing and the Treasury before increasing the rent. In my view, what the respondent is required to do is to submit estimates of its revenue and expenditure. The respondent is only required to give an estimated figure of the revenue it is likely to generate. The applicants have not shown that the respondent did not indicate in its revenue estimates that it expected to generate revenue from rent. I do not think this particular Section can assist the applicants' case. Section 15 will also not be of much help to the applicants. The respondent's act of increasing rent does not make it opaque in its operations.

Article 47 of the Constitution provides for fair administrative action. It provides that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. If a right or fundamental freedom of a person is likely to be adversely affected by administrative action, then written reasons must be given. The applicants argue that the respondent failed to hear them and never gave any reasons for its decision. I think the applicants' arguments on this issue will be better addressed by considering the second issue.

The second issue is whether the applicants are deserving of the orders sought. The respondent argued that the relationship between the applicants and the respondent is contractual and therefore the remedies of judicial review are not available in the circumstances. I agree. What the applicants have placed before this court is purely a landlord–tenant issue which ought to be sorted out through private law. The applicants have not placed any evidence before the court to show that due to the fact that they are civil servants they are entitled to housing whose rent cannot be increased. In my view, there are no public law issues that have been placed before this court by the applicants. The respondent, though a public body, dealt with the applicants in its capacity as a landlord. A landlord needs not consult a tenant before increasing rent. A landlord has no duty of giving the tenant the reasons for increasing rent. If a tenant is aggrieved by increase of rent, there are laws for addressing such grievances. Orders of judicial review are not available in such a situation. For the reasons given above, this application fails and the same is dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 19th day of April , 2013

W. K. KORIR,
JUDGE