



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**MISC. APPL. JR. NO. 447 OF 2012**

BETWEEN

REPUBLIC ..... APPLICANT

AND

THE CHAIRMAN RENT RESTRICTION TRIBUNAL.....1<sup>ST</sup> RESPONDENT

THE ATTORNEY GENERAL..... 2<sup>ND</sup> RESPONDENT

AND

*EX -*

*PARTE*

EZEKIEL MACHOGU

AND

PAUL MOTANYA.....1<sup>ST</sup> INTERESTED PARTY

RICHARD AMENYA.....2<sup>ND</sup> INTERESTED PARTY

THOITA EZEKIEL.....3<sup>RD</sup> INTERESTED PARTY

**JUDGMENT**

**Introduction and background**

1. The decision challenged in this matter is a decision of the Rent Restriction Tribunal (“the Tribunal”) established under the *Rent Restriction Act (Chapter 296 of the Laws of Kenya)* (“the Act”).

2. The *ex-parte* applicant (“the applicant”) is the registered owner of Plot No. 36/1/7/232, a rental property in Mathare, Mlango Kubwa, Nairobi comprising 40 residential units rented out to, amongst others, the interested party.
3. He states that as at 1<sup>st</sup> October 2012, all the tenants were paying Kshs. 3000/= but due to rising costs of electricity and conservancy services and after due consultation and agreement with a majority of the tenants, the rent was revised upwards to 3,500/= per month with effect from 1<sup>st</sup> November 2012.
4. The interested parties filed a complaint at the Rent Restriction Tribunal at Nairobi on 8<sup>th</sup> November 2012 being **Rent Restriction Case No. 534 of 2012** seeking orders, *inter alia*, restraining the landlord from interfering with quiet possession or arbitrarily increasing rent pending hearing the suit. An order was issued by the Tribunal ordering as follows;
  1. *That the application is hereby certified as urgent and heard ex-parte in the first instance.*
  2. *That the Defendant/Landlord by himself, his servants, employees and or agents is hereby restrained from increasing rent, evicting, harassing the Plaintiffs/Tenants and or in any other manner interfering with their tenancies pending the hearing of the application interparties.*
  3. *That the Plaintiffs/Tenants do deposit their rent through the Tribunal till the matter is heard and determined.*
  4. *That the OCS Pangani Police Station do ensure compliance of these orders.*
  5. *That the Defendant/Landlord to be served for interties hearing within 14 days.*
5. Although the matter was filed on 8<sup>th</sup> November 2012, the formal order extracted shows that it was given on 7<sup>th</sup> November 2012. No explanation was given for this inconsistency but for purposes of these proceedings, I do not think the same is material for this determination as it clear that proceedings were filed before the Tribunal and an order given thereon.

### **Application and arguments**

6. It is the order issued by the Tribunal that precipitated these proceedings. In the Notice of Motion dated 23<sup>rd</sup> January 2013, the applicant sought orders of certiorari to quash the decision of the Tribunal given on 7<sup>th</sup> November 2012 and an order of prohibition to prohibit the Tribunal from proceeding with the hearing and determination of the case filed before it.
7. The applicant’s argument is that the Tribunal has no jurisdiction to entertain the tenants’ complaint. The applicant grounded his argument on the provisions of the Act. According to him, the Act excludes dwelling houses which have a standard rent not exceeding Kshs. 2,500/= per month furnished or unfurnished. Therefore at the time the jurisdiction of the Tribunal was invoked, the evidence before the court was clear that each tenant was paying standard rent in excess of Kshs. 2,500/=. Thus the tribunal exceeded its jurisdiction in granting the orders. Counsel for the *ex-parte* applicant, Mr Onyambu, cited **Rent Restriction Tribunal v Raval ex-parte Mayfair Bakeries Limited (1985) KLR 167** and **Kenya National Examinations Council v Republic ex-parte Geoffrey Gathenji and Others CA Civil Appeal No. 9 of 1996** to support the argument that where a tribunal exceeds its jurisdiction, its orders may be quashed by an order of certiorari.
8. The Chairperson of the Tribunal, Hon. Hillary Korir, has sworn an affidavit on 18<sup>th</sup> April 2013 in which he states, at the material part as follows;
  3. *That the complaint is about rent increment from Kshs.3,000/= to Kshs3,500/= and intended eviction of the tenants, the applicants therein by the respondent.*
  4. *That it is true I issued orders, referred to as injunctive orders by the applicant herein, to preserve the position of the matter pending the final determination of the suit.*
  5. *That the orders were necessary since failure to do so would have rendered the suit nugatory and*

- the applicants would stand to suffer irreparable damage and loss.*
6. *That I believe I had jurisdiction to issue such orders to ensure that justice is discharged expediently.*
  7. *That I am aware that the statute, Rent Restriction Tribunal restricts jurisdiction of the Rent Tribunal to handling disputes involving rental houses attracting rent of not more than Kshs.2,500/=.*
  9. Counsel for the respondent, Ms Cheruiyot, supported by position taken by the Tribunal and argued that it had jurisdiction by reason that the houses were not let by standard rent but agreed rent hence the Tribunal has jurisdiction to intervene by interim orders before proceeding to assess the rent in accordance with **section 5(1)** of the Act.
  10. The interested parties, who are the applicant's tenants, have also opposed the application and adopted the arguments by the respondent. Mr Oundu, counsel for the tenants, argued that **section 2** of the Act is clear that the Tribunal has jurisdiction over premises where the standard rent does not exceed Kshs.2,500/= and one of the key functions of the tribunal is the assessment and determination of standard rent of residential premises. In the circumstances, counsel argued that tribunal has jurisdiction in so far as it had not assessed the standard rent and the interim orders were issued to preserve the status quo to enable the tribunal exercise its function.

### **Determination**

11. The issue for consideration is the jurisdiction of the Rent Restriction Tribunal and it is trite law that the tribunal is a creature of statute and has only such jurisdiction as has been specifically conferred upon it by the statute (see ***Rent Restriction Tribunal v Raval ex-parte Mayfair Bakeries Limited (supra)***).
12. **Section 2** of the Act states that its provisions extend to all dwelling houses, other than –
  - a. Excepted dwelling house
  - b. Dwelling house let on service tenancies
  - c. Dwelling houses which have a standard rent exceeding two thousand five hundred per month, furnished or unfurnished.
13. According to **section 3** of the Act, “*standard rent*” as is relevant to these proceedings is defined as,

*(a) in relation to an unfurnished dwelling house*

*(1) If on 1<sup>st</sup> January, 1981, it was let unfurnished, the rent at which it was lawfully so let, the landlord paying all outgoings.*

14. It is clear that the jurisdiction of the tribunal is specifically defined and it relates to standard rent or assessment thereof which does not exceed Kshs. 2,500/= per month. It is not in dispute that the rent for the suit premises was agreed and beyond the jurisdictional limit for the Tribunal. Paul Motanya, one of tenants, in the affidavit sworn on 8<sup>th</sup> November 2012 and filed in the Tribunal states as follows;

*[3] THAT we have been paying rent of Kshs.3,000/= monthly promptly and are not in rent arrears.*

.....

*[8] THAT the Defendants/Landlord has unilaterally and arbitrarily given out a demand for increment of rent from Kshs.3,000/= to Kshs.3,500/= without justifiable cause.*

[9] THAT on the 1<sup>st</sup> of October 2012 we were served with a notice to increase rent from Kshs. 3,000/= to Kshs.3,500/= with effect from 1<sup>st</sup> of November 2012 without any justification at all.

15.The chairperson of the Tribunal appreciated that the issue in the matter concerned whether the agreed rent of Kshs. 3,000/= should have been raised to Kshs. 3,500/=. Although **section 5(1)(a)** of the Act empowers the Tribunal to assess the standard rent either on application of any person interested of its own motion, the case before it did not call for assessment of the standard rent as the rent was already agreed upon as between landlord and tenant (see ***Gershuni v Ombima [1975] EA 135*** and ***Shah v Aggarwal CA Civil Appeal No. 60 of 1981 [1983]eKLR***). I therefore find and hold that the amount of rent and the fact that it was agreed removed the subject premises from the definition of standard rent prescribed by the Act and therefore from the jurisdiction of the Tribunal. The Tribunal cannot appropriate jurisdiction to investigate or asses rent where the rent agreed by the landlord and tenant is above the standard rent as defined by the Act.

16.In ***Kenya National Examination Council Case (supra)***, the Court of Appeal noted that, “*Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, where the rules of natural justice are not complied with or far such like reasons.*” As the Tribunal did not have jurisdiction to entertain the claim by the tenants and therefore the order issued on 9<sup>th</sup> November 2012 is *ultra vires* the provisions of the Act and is therefore quashed. As the order has been quashed, an order of prohibition is warranted in the circumstances.

### **Disposition**

17.The allow the Notice of Motion dated 23<sup>rd</sup> January 2012 on the following terms;

- a. An order of certiorari be and is hereby issued directing the that the decision of the Rent Restriction Tribunal at Nairobi given on 7<sup>th</sup> November 2012 in the Rent Restriction Case No. 534 of 2012 be forthwith removed to the High Court and is hereby quashed.
- b. An order of prohibition be and is hereby issued prohibiting the Rent Restriction Tribunal from proceeding in any manner whatsoever in the Rent Restriction Case no. 534 of 2012.
- c. There shall be no order as to costs.

**DATED and DELIVERED at NAIROBI this 9<sup>th</sup> day of September 2013**

**D.S. MAJANJA**

**JUDGE**

**Mr Onyambu instructed by Nyaundi Tuiyott and Company Advocates for the ex-parte applicant.**

**Ms Cheruiyot, Litigation Counsel, instructed by the State Law Office for the respondent.**

**Mr Oundu instructed by Gichuke Ribathi and Company Advocates for the interested party.**