



**Republic v Tribunal; Commodity World Limited (Exparte); Onsoti & 3 others (Interested Parties)
(Miscellaneous Application E038 of 2021) [2022] KEELC 167 (KLR) (16 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 167 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E038 OF 2021**

**BM EBOSO, J
MAY 16, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

RENT RESTRICTION TRIBUNAL RESPONDENT

AND

COMMODITY WORLD LIMITED EXPARTE

AND

SILVIA KERUBO ONSOTI INTERESTED PARTY

GOSHEN REAL ESTATE LIMITED INTERESTED PARTY

AUSTIN, ALLAN & ANITA LIMITED INTERESTED PARTY

REGENT AUCTIONEERS INTERESTED PARTY

JUDGMENT

1. Through a motion dated 6/10/2021, the exparte applicant, Commodity World Limited, seeks the following judicial review orders:
 - i. An order of *certiorari* to remove into this court and quash the entire proceedings that are pending as well as all orders and directions that have been issued by the Rent Restriction Tribunal in Nairobi Rent Restrictions Tribunal Case No. E533 of 2021.
 - ii. An order of prohibition from further hearing and making determinations in Nairobi Rent Restrictions Tribunal Case No. E533 of 2021.



- iii. An order of prohibition directed at the respondent prohibiting it, whether by itself, its agents and/or its servants or otherwise, howsoever, from adjudicating Nairobi Rent Restriction Tribunal Case No. E533 of 2021.
2. The motion was supported by a statutory statement dated 1/10/2021 and a verifying affidavit sworn by Lucy W Kiarie on 30/9/2021. It was canvassed through written submissions dated 2/12/2021.
3. The case of the *ex parte* applicant is that it acquired ownership of land parcel numbers Kiamba/Ruaka/2016 and 2131 together with the developments thereon through registration in August 2021. The said parcels have residential apartments on them. At the time of acquiring the properties, Sylvia Kerubo Onsoti [the 1st Interested Party] was a tenant in one of the apartments, paying a monthly rent of Kshs 28,000. Vide a letter dated 31/8/2021, its property manager, M/s Austin Allan and Anita Limited, notified all tenants about the change of ownership and gave them the Bank Account and Mpesa details through which rent was to be paid henceforth.
4. The *ex parte* applicant contends that the 1st interested party failed to pay rent for the month of September 2021 and initiated proceedings in the Rent Restriction Tribunal seeking orders barring the *ex parte* applicant against levying distress for rent. On or about 15/9/2021, the Tribunal granted the 1st interested party *ex parte* orders barring the *ex parte* applicant against levying distress for rent.
5. The *ex parte* applicant is aggrieved by the decision of the Tribunal and challenges it on three grounds: (i) that the Tribunal lacks jurisdiction to entertain the dispute because the monthly rent is Kshs 28,000; (ii) that the Tribunal made the decision without according the *ex parte* applicant a hearing; and (iii) that the Tribunal committed fundamental procedural irregularities in admitting the case and issuing *ex parte* orders.
6. Through written submissions filed by the firm of Kiragu Wathuta & Company Advocates, the *ex parte* applicant argues that Section 2 of the [Rent Restriction Act](#) provides for the jurisdiction of the Tribunal and grants jurisdiction to the Tribunal in tenancy disputes where the standard rent does not exceed Kshs 2,500 per month. The *ex parte* applicant argues that because the 1st interested party's monthly rent is Kshs 28,000, the tenancy dispute falls outside the jurisdiction of the Tribunal. Relying on the decision in [Phoenix of EA Assurance Limited v S M Thiga t/a Newspaper Service](#) [2019] eKLR, the *ex parte* applicant urges the court to find that the Tribunal failed to act procedurally because it ought to have first established whether or not it had jurisdiction before it granted the *ex parte* orders which it issued.
7. The 1st interested party opposed the motion through a replying affidavit dated 15/10/2021; a notice of preliminary objection dated 21/10/2021; and written submissions dated 18/12/2021, filed through the firm of Faith Akoth Oketch & Co Advocates. Her case is that she entered into a tenancy agreement with the 2nd interested party on 19/10/2020. Pursuant to the said tenancy agreement, she occupied Apartment Number B3 at Imani Apartments, at a monthly rent of Kshs 28,000. She has been paying the monthly rent without default. On 4/9/2021, while leaving the premises to drop her child in school, the caretaker of the building approached her in the company of an agent of the 3rd interested party and handed to her new details of where rent was to be paid. They also handed to her a tenancy initiation form from the 3rd interested party. At that point, she had not been informed about change of ownership of the property. The caretaker subsequently went to her apartment in the evening to collect the form. On that evening, she informed the caretaker that she had already remitted rent for September 2021 to the previous agent, M/s Goshens Real Estate Ltd [2nd interested party], and showed him communication from the 2nd interested party advising tenants not to pay rent to any other agent. On 5/9/2021, she received communication from the 3rd interested party informing her that they were the



new owners and managers of the property and directing her to pay rent to them. At that point, she was completely confused due to the conflicting communication.

8. The 1st interested party adds that on 9/9/2021, the 3rd interested party engaged the 4th interested party to proclaim and attach her property in purported recovery of rent for the month of September 2021 and the 4th respondent proceeded to proclaim her property. Aggrieved, she initiated proceedings in the Tribunal and obtained restraining orders. She adds that she had never interacted with the ex-parte applicant and she had never received any prior formal communication about change of ownership of the property.
9. Through written submissions dated 18/12/2021, filed by the firm of Faith Akoth Oketch & Co Advocates, the 1st interested party argues that the ex-parte applicant ought to have moved the Tribunal to assess the standard rent in the first place to establish that the tenancy dispute fell outside the jurisdiction of the Tribunal. The 1st interested party argues that because the standard rent has not been assessed, the allegation of want of jurisdiction on part of the Tribunal is unsubstantiated.
10. The 1st interested party faults the ex-parte applicant for failing to move the Tribunal to set aside its orders at the interpartes hearing and inappropriately initiating judicial review proceedings. The 1st interested party urges the court to dismiss the motion with costs.
11. The respondent did not file a response to the motion. Similarly, the 2nd, 3rd and 4th interested parties did not file responses.
12. I have considered the motion, the response to the motion, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. It is noted that on 8/11/2021, the court directed that the grounds in the notice of preliminary objection were to be canvassed as part of the grounds of opposition to the notice of motion. Two issues fall for determination in the motion. The first issue is whether, by exercising jurisdiction in Tribunal Case No E533 of 2021, the Tribunal committed procedural illegalities that render its proceedings illegal. The second issue is whether this motion is the appropriate platform through which to seek redress against the alleged procedural illegalities.
13. There is no gainsaying that the pecuniary jurisdiction of the Tribunal is pegged at a standard rent of Kshs 2500 per month. The Tribunal has no jurisdiction over tenancy disputes where the standard rent is more than Kshs 2500 per month. This position is anchored in Section 2(1) of the [Rent Restriction Act](#) which provides as follows:
 2. Application
 - (1) This Act shall apply to all dwelling-houses, other than—
 - a) excepted dwelling-houses;
 - b) dwelling-houses let on service tenancies;
 - c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.
14. The materials presented in this motion indicate that the 1st interested party disclosed at paragraph 7 of the plaint that the monthly rent was Kshs 28,000. She made a similar disclosure at paragraph (b) of her supporting affidavit sworn on 11/9/2021. Further, she exhibited a copy of the lease indicating that the monthly rent was Kshs 28,000. What was the Tribunal expected to do upon being invited to exercise jurisdiction in a tenancy dispute where the agreed and disclosed monthly rent was Kshs 28,000 per month?



15. The procedure which the Tribunal ought to have followed is set out in a number of decisions which both the High Court and this court have made and which the Tribunal has access to. Okongo J outlined the relevant procedure in *Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & Another [interested parties] Ex parte Charles Macharia Mugo* [2019] eKLR:

“In my view, it was incumbent upon the Tribunal to determine its jurisdiction before entertaining the dispute. The Tribunal had a duty to make enquiries on the standard rent for the suit property. From that enquiry, it would have determined whether the premises had a standard rent or not. If the premises from its enquiry had not been erected or not let as at 1st August 1981 then, the Tribunal should have proceeded to assess the standard rent before entertaining the dispute. In entertaining the dispute without first determining whether it had jurisdiction over the same, the tribunal acted irregularly and unreasonably. It was common ground that the applicant was a tenant of the 1st interested party on the suit property and that the applicant was paying a monthly rent of Kshs. 16,000/= to the 1st interested party. It follows therefore that since the applicant was paying a monthly rent of Kshs. 16,000/= per month for the suit property, the premises were prima facie outside the jurisdiction of the tribunal. I am of the view that the standard rent for the suit property had to be taken to be Kshs. 16,000/= which was being paid by the applicant for the suit property unless it was determined otherwise by the tribunal. In the circumstances, in assuming jurisdiction over the premises whose rent was Kshs. 16,000/=:, the respondent acted without jurisdiction. It is settled that jurisdiction is everything and without it, a court or tribunal must lay down its tools. Jurisdiction cannot be assumed neither can it conferred by agreement. As was stated in *Desai v. Warsama* [1967] E.A 351, no court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities.”

16. This court reiterated the above procedure in *Jobakim Abayo v Mokua Damacline Nyamoita* [2021] eKLR in the following words:

“21. This court has in the past pronounced itself on how the Tribunal should proceed whenever it is faced with a dispute where the agreed or prevailing monthly rent is more than Kshs 2,500. [see *Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & another (interested parties) Ex parte Charles Macharia Mugo* [2019] eKLR. For the umpteenth time, it is emphasized that the first business of the Tribunal in such circumstances is to assess standard rent with a view to establishing whether it has jurisdiction or not. Unless and until standard rent is ascertained, the Tribunal has no jurisdiction to entertain or issue orders in a dispute where the agreed or prevailing rent is more than Ksh 2,500 per month. It is not lost to this court that it is with this in mind that Parliament, through the Act, gave the Tribunal powers to assess rent on its own motion or upon application whenever it is seized of a dispute. The Tribunal assumes adjudicatory jurisdiction in such circumstances only when it has ascertained that the standard rent falls within the limits set by the statute. It ought to be understood that *the Constitution* has established other relevant adjudicatory bodies where tenancy disputes involving higher monthly rents are to be adjudicated.”



17. Given that full disclosure had been made to the Tribunal to the effect that the prevailing rent was Kshs 28,000, this tenancy dispute was, *prima facie*, outside the jurisdiction of the Tribunal prerogative orders. The Tribunal was, in the circumstances, obligated to first establish the standard rent before assuming jurisdiction by issuing ex-parte orders in the dispute. This court is, in the circumstances, convinced that the Tribunal committed procedural illegalities that render its proceedings illegal.
18. The 1st interested party faulted the ex-parte applicant for not moving the Tribunal to assess the standard rent. The proposition is, in my view most unfortunate. The 1st interested party was paying a monthly rent of Kshs 28,000 at the time she approached the Tribunal for redress. She had access to the Chief Magistrate Court which was seized of jurisdiction to adjudicate her dispute. She elected not to go to the Chief Magistrate Court and approached the Tribunal while aware that the Tribunal's pecuniary jurisdiction was limited to tenancies of standard rent of Kshs 2500 per month. Upon approaching the Tribunal, she elected not to first invite the Tribunal to assess the standard rent. In my view, given the above circumstances, she was obligated to move the Tribunal to first assess the standard rent. She cannot shift that obligation to the ex-parte applicant.
19. For the above reasons, the court finds that by proceeding to exercise adjudicatory jurisdiction, in the circumstances, without first assessing the standard rent, the Tribunal committed procedural illegalities that render its proceedings illegal.
20. The second issue is whether this motion is the appropriate platform through which to seek redress against the above illegalities. This suit is a judicial review motion where the ex-parte applicant seeks a judicial review order quashing the illegal proceedings and orders of the Tribunal and prohibiting the Tribunal against perpetuating the illegalities. Section 13 of the *Environment and Land Court Act* empowers this court to issue prerogative orders against public bodies, tribunals and magistrate courts. The ex-parte applicant's suit challenges the procedure that was adopted by the Tribunal in a dispute where the prevailing rent had been disclosed and was, *prima facie*, outside the jurisdiction of the Tribunal. It is the view of this court that this motion was properly brought within the above framework and is the proper platform on which to seek redress against the procedural illegalities.
21. On costs, it is apparent that the illegality which triggered this motion was largely contributed to by the Tribunal itself. In the circumstances, parties will bear their respective costs of the suit.
22. In the end, the motion dated 6/10/2021 is allowed in the following terms:
 - a) An order of certiorari is hereby issued quashing all injunctive orders issued by the Rent Restriction Tribunal in Nairobi Rent Restriction Tribunal Case No E533 of 2021.
 - b) The Rent Restriction Tribunal is hereby prohibited against adjudicating the dispute in Nairobi Rent Restriction Tribunal Case No. E533 of 2021 until the standard rent is assessed and it is established that the standard rent does not exceed Kshs 2,500 per month.
 - c) The 1st interested party is at liberty to ventilate her grievances in a court of law sized of jurisdiction to adjudicate the dispute.
 - d) Parties shall bear their respective costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF MAY, 2022

B M EBOSO

JUDGE



In the Presence of: -

Ms Mulongo holding brief for Mr Wathuta for the Ex-parte Applicant

Mr Omemo holding brief for Ms Oketch for the 1st Interested Party

Court Assistant: Lucy Muthoni

