



**Republic v Rent Restriction Tribunal; Mbandu (Exparte Applicant);
Osore (Interested Party) (Judicial Review Cause E003 of 2022)
[2022] KEELC 12728 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
JUDICIAL REVIEW CAUSE E003 OF 2022**

E ASATI, J

SEPTEMBER 29, 2022

IN THE MATTER OF

BETWEEN

REPUBLIC APPLICANT

AND

RENT RESTRICTION TRIBUNAL RESPONDENT

AND

RHODA AMUMO MBANDU EXPARTE APPLICANT

AND

LORNA OSIMBO OSORE INTERESTED PARTY

JUDGMENT

Introduction

1. By its ruling dated May 10, 2022, this court granted leave to the *ex parte* applicant to apply for orders of prohibition and certiorari within 21 days from May 10, 2022.
2. In compliance with the court order, the *ex parte* applicant filed the notice of motion application dated May 30, 2022 (the application) stated to be brought pursuant to the provisions of order 53 rule 3(1) of the [Civil Procedure Rules, 2010](#). The application seeks for orders that:-
 - a. The honorable court be pleased to grant the prerogative orders of prohibition and certiorari against the Rent Restriction Tribunal *vide*, Kakamega rent restriction tribunal cause No 1 of 2021.
 - b. That costs be provided for.



3. The grounds upon which the application is based are shown on the face of the application namely that the *ex-parte* applicant is the landlady in respect of residential premises situate on land parcel No South Maragoli/lyaduywa/2165, the interested party was a tenant in the said residential premises paying a monthly rent of Ksh 15,000/= but was duly evicted in the month of December 2020 for being in arrears of Ksh 195,000/=, that aggrieved by the eviction the interested party filed a claim before the respondent tribunal being Kakamega rent restriction tribunal cause No1 of 2021, that the *ex parte* applicant responded to the claim by way of a notice of preliminary objection on the grounds that the tribunal lacked jurisdiction to entertain the claim courtesy of section 2 (1) (c) of the [Rent Restriction Act](#) which limits its jurisdiction to tenements whose monthly rent does not surpass the sum of Ksh 2,500/- That however, the tribunal declined to hear the notice of preliminary objection and proceeded to arrogate itself authority to determine the claim by the interested party effectively exercising powers it did not possess in law.
4. The interested party replied to the application for leave *vide* the replying affidavit sworn on March 15, 2022 but did not reply to the substantive application. The applicant (republic) entered appearance *vide* the memorandum of appearance dated April 28, 2022 but did not file any further documents/ pleadings.
5. When the application came up for hearing on July 19, 2022, parties agreed by consent to have the application canvassed by way of written submissions to be filed and exchanged within seven (7) days from July 19, 2022.
6. Written submissions dated July 26, 2022 were filed on behalf of the *ex parte* applicant by the law firm of Chanzu Victor & Company Advocates. Counsel framed 4 issues for determination namely: - Whether the honourable court has jurisdiction to entertain the matter, whether the respondent had jurisdiction to entertain the claim, whether the respondent observed the rules of natural justice while handling the claim and whether the *ex parte* applicant is entitled to the relief sought.
7. On whether this court has jurisdiction to hear the matter before it, counsel submitted that the court has jurisdiction to hear and determine the judicial review application. Counsel relied on article 162 (2) (b) of the [Constitution](#) of Kenya 2010, section 13 of the [Environment and Land Court Act](#) and the [Fair Administrative Action Act](#), 2015. Counsel also relied on the cases of [Republic v Vice Chancellor Jomo Kenyatta University of Agriculture and Technology](#) (2008) eKLR, [Chief constable of North Water Police v Evans](#) (1082) WLR 1155p 1173 and [Karaini Investments v National Land Commission and another](#) (2018) eKLR.
8. On whether the respondent had jurisdiction to entertain the claim counsel submitted that section 2(1) of the [Rent Restriction Act](#) is clear that the Act shall apply to all dwelling houses other than dwelling houses which have a standard rent exceeding two thousand five hundred shilling per month furnished or unfurnished. Counsel also referred to regulation 11 of the regulations under section 36 of the Act which provides that the procedure to be followed by the tribunal is the procedure prescribed under the [Civil Procedure Act](#) so far as it practicable. Counsel submitted that where there is no evidence on record to show the existence of impartial hearing and subsequent orders on the matter of the preliminary objection dated May 27, 2021, the preliminary objection raised points of law which the respondent tribunal declined to give directions hence the court has jurisdiction to interpret the provisions of the [Rent Tribunal Act](#) and the [constitution](#) of Kenya among other laws in relation to the application. Counsel concluded on this issue that the respondent tribunal had no jurisdiction to issue orders on the basis of expunged claim pleadings or to decline to give direction on issues raised in the preliminary objection.



9. On whether or not the respondent tribunal observed the rules of natural justice while handling the claim and whether the *ex parte* applicant is entitled to the relief sought. Counsel relied on article 47 of the Constitution of Kenya 2010, section 4 of the Fair Administrative Actions Act of 2015 and the Rent Restriction Act and submitted that the respondent flouted the rules of natural justice by failing to afford the *ex parte* applicant an opportunity to be heard on the substantive claim. Counsel relied on the decided cases of Robert Mutiso Lelei and Cabin Crew Investment v National Land Commission and 3 others (2017) eKLR and Sceneries Limited v National Land Commission (2017) eKLR. Counsel concluded that the respondent breached the law and specifically article 47 of the Constitution of Kenya 2010. Counsel prayed that the application be allowed.
10. Written submissions were filed on April 13, 2022 by the firm of MAC Law Advocates on behalf of the interested party. These were submissions in respect of the application for leave. Counsel submitted that the tribunal had jurisdiction to entertain the matter. Counsel referred to sections 5,6 and 9 of the Rent Restriction Act and the case of Republic v Rent Restriction Tribunal Ex Parte: Mayfair Bakeries Limited and another 1982 eKLR and HCCC 336 of 1978 Hebtulla Properties Ltd v Electro Services & Equipment Ltd.

Counsel submitted further that judicial review proceedings are concerned with the decision -making process and not the merits of the decision. For this counsel relied on the authority of Commissioner of Lands v Kunste Hotel Limited 1997 eKLR. It was submitted further that judicial review is a remedy of last resort and ought not to be applied where there exists appropriate remedies to address the grievances complained of. That the *ex parte* applicant ought to have proceeded on appeal instead of judicial review. Counsel relied on the cases of Republic v Rent restriction Tribunal & 2 others Ex Parte Evans Nyaboro Paul Kinuthia Kilundi, and Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Chairman Rent Restriction Tribunal and 99 others. The interested party prayed that the judicial review proceedings be struck out with costs.

Issues for determination

11. From the pleadings filed and the submissions made, this court identifies the following as the issues for determination.
 - a. Whether or not the judicial review proceedings are available to the *ex parte* applicant.
 - b. Whether or not the *ex parte* applicant is entitled to the orders sought
 - c. Who pays the costs?
12. The jurisdiction of this court to entertain judicial review proceedings as a remedy available in law is anchored in the Constitution of Kenya 2010 and other laws more specifically, the Environment and Land Court Act, the Civil Procedure Rules and the Fair Administrative Action Act. Article 165(3) (e) of the Constitution of Kenya provides that:

Subject to clause 5, the High Court shall have any other jurisdiction, original or appellate conferred on it by legislation.”

Article 165 (6) provides:

“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.”

Article 165(7) provides that:



“For the purpose 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.”

13. The first issue for this court’s determination is whether the judicial review proceedings are available to the *ex parte* applicant. This issue arises from the interested party’s submission that the proper procedure for the *ex parte* applicant to have adopted would be to file an appeal if she was aggrieved by the decision of the tribunal and not judicial review. Appeals are concerned with the merits and demerits of a decision, while judicial review concerns itself with the decision-making process and not the private rights or merits of the decision being challenged. See case of [Cortec Mining Kenya Limited v Cabinet Secretary Mining Ministry and 9 others](#) [2017] eKLR Court of Appeal at Nairobi. The *ex parte* applicant’s case was that the interested party, filed the suit against her at the Rent Restriction Tribunal at Kakamega pursuant to the provisions of the [Rent Restriction Act](#). That in response to the suit, she had raised a preliminary objection on the grounds *inter alia* that the tribunal lacked jurisdiction to entertain the suit. The *ex parte* applicant contends that the tribunal declined to hear the preliminary objection and instead proceeded to issue orders. She complains that this was wrongful and contrary to the rules of natural justice. That the tribunal proceeded to issue the orders while it had no jurisdiction in the matter to do so.

The interested party on the other hand contends that the preliminary objection was dismissed because it did not raise points of law.

There is no evidence on record to show that the preliminary objection was ever heard. What was placed before this court was the order issued by the tribunal dated February 11, 2022.

14. Jurisdiction is a threshold matter which a tribunal should investigate preliminarily so as to satisfy itself that it has the power to handle the matter. In the case of *Owners and Masters of the Motor Vessels “Joey” v Owners and Masters of Motor Tugs Barbara* and “Steve B” (2008) EA 367 the Court of Appeal held as follows:-

“The question of jurisdiction is a threshold issue and must be determined by a judge at the threshold stage using such evidence as may be placed before him by the parties...It is for this reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court.”

15. There is no evidence that the court inquired into the issue of jurisdiction or made any determination thereon. In [Jobakim Abayo v Mokua Damacline Nyamoita](#) (2021) eKLR the ELC at Nairobi expressed itself on this matter as follows:-

“This court has in the past pronounced itself on how the tribunal should proceed when it is faced with a dispute here the agreed or prevailing monthly rent is more than Kshs 2,500/= (See *Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & another (interested party) 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 the 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.

16. Black's Law Dictionary defines jurisdiction as

“the power and authority constitutionally conferred upon a court or a judge to pronounce the sentence of the law or to award the remedies provided by law upon a state of facts proved or admitted, referred to the tribunal for decision and authorized by law to be the subject of investigation or action by that tribunal and in favour of or against persons who present themselves or who are brought before the court in some manner sanctioned by law as proper and sufficient.”

It is the power that a decision-making body must possess to be able to adequately adjudicate a dispute. In Samuel Kamau Macharia & another v KCB & 2 others, the Supreme court of Kenya observed that “A court’s jurisdiction flows from either the constitution or legislation or both.”

17. The Rent Restriction Tribunal is a creation of the Rent Restriction Act. It is established under section 4 of the Act. The Act expressly outlines the extent of its application. In section 2 (1) the Act provides that:

“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.

The definition of standard rent is contained in section 3(1) of the act which provides that standard rent is:-

“Rent at which premises were let on January 1, 1981 and if as at January 1, 1981 the premises were not let or not erected or it cannot be determined whether they were let or erected, such rent as may be assessed by the honorable tribunal.”

18. It is clear that the tribunals jurisdiction is limited to dwelling house of a standard rent of Ksh 2,500/- The rent herein is Ksh 15,000/= This is obviously beyond he jurisdiction of the tribunal. There is no evidence that the tribunal endeavored to assess the rent.

In Desai v Warsama (1967) EA 351 the court held that:-

“no court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceed to hear and determine a matter not within its jurisdiction, the proceedings and the determination are a nullity.”

The Supreme Court reinforced this position in its advisory opinion in constitutional application No 2 of 2011 when it states that:

“The Lillian's case (1989) KLR establishes that jurisdiction flows from the law and the recipient court is to apply the same with any limitation embodied therein. Such a court may not arrogate to itself jurisdiction through craft of interpretation of by way of endeavor to



discern or interpret the intention of parliament where the wording of legislation is clear and there is no ambiguity”

19. Case law abound on the issue of jurisdiction of the Rent Restriction Tribunal. Where the rent is beyond Kshs 2500/= courts have held that the actions of the tribunal were beyond its jurisdiction. For instance in the case of Peter John Hayward v Sarah Wangui Ndungu (2019) eKLR where the subject rent was Ksh 25,000, the court held that the relationship between the landlord and the tenant was governed by the tenancy agreement and not the Act. In Republic v Deputy Chairman Rent Restriction in Tribunal, Butrus Juma (Interested Party) Ex Parte Joseph Kagwatha (2019) eKLR where the rent was Kshs 25,000/= and the court held that the tribunal lacked jurisdiction to entertain the suit.

From the provisions of the act and the cited authorities it is clear that the tribunal lacked jurisdiction in the current case where the standard rent was Kshs 15,000/=

20. In the Uganda case of Pastoli v Kabale District Local Government Canal & others (2008) 2 &A 300 at pages 300-304 the court held that

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality and procedural impropriety. Illegality is where the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires* or contrary to the provision of a law or its principles are instances of illegality...”

21. I am satisfied that the tribunal not only acted *ultra vires* its powers but also failed to hear the issues raised in the preliminary objection in the first instance. I find that the judicial review application has merit and that the *ex parte* applicant is entitled to the orders sought. I allow the application as follows; -
- i. An order of judicial review in the form of *certiorariis* issued to bring into this court for purposes of quashing, all the proceedings and orders made by the Rent Restriction Tribunal in Kakamega rent restriction case No 1 of 2021.
 - ii. An order of judicial review in the form of prohibition is hereby issued prohibiting the Rent Restriction Tribunal from proceeding with Kakamega rent restriction case No 1 of 2021.
 - iii. Each party to bear own costs.

Orders accordingly

JUDGEMENT DATED, DELIVERED AND SIGNED IN OPEN COURT AT VIHIGA THIS 29TH DAY OF SEPTEMBER 2022.

E. ASATI

JUDGE.

In the presence of:

Indimuli Advocate holding brief for Chanzu for the Ex Parte Applicant.

Mudavadi Advocate holding brief for Lumalasi for the Interested Party.

Juma Court Assistant.

E. ASATI

JUDGE.

