



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Cause 649 of 2008

IN THE MATTER OF AN APPLICATION BY PETERSON KAMAU KIARIE AND IGANJO HOLDINGS LIMITED FOR A JUDICIAL REVIEW ORDER OF CERTIORARI

BETWEEN

REPUBLIC..... APPLICANT

V E R S U S

THE CHAIRMAN BUSINESS PREMISES RENT TRIBUNAL..... RESPONDENT

NAFTALI KIRAMUNYA KITHIA.....INTERESTED PARTY

EX-PARTE: PETERSON KAMAU KIARIE AND IGANJO HOLDINGS LTD.

R U L I N G

This is a Notice of Motion dated 10th December 2008, filed by M/s Murage & Mwangi advocates for the ex-parte applicants named as **PETERSON N. KAMAU KIARIE and IGANJO HOLDINGS LTD.** The respondent is named as **THE CHAIRMAN BUSINESS PREMISES RENT TRIBUNAL.** There is an interested party named as **NAFTALI KIRAMUNYA KITHIA.**

The Notice of Motion application was filed on 10th December, 2008 under Order LIII rule 3(1) of the Civil Procedure Rules, and section 3A of the Civil Procedure Act. The orders sought are that-

- 1. *An order of certiorari be issued removing to this court for the purpose of being quashed the decision of the Chairperson of the Business Premises Rent Tribunal delivered on 25th August, 2008 – in Business Premises Rent Tribunal Case No. 137 of 2008.***
- 2. *The cost of this application be provided for.***

The application is grounded on the **STATUTORY STATEMENT** dated 24th October, 2008 and the **VERIFYING AFFIDAVIT** sworn by **PETERSON KAMAU KIARIE**, the 1st applicant on 24th October, 2008. The grounds of the application are, that the Chairperson’s decision is manifestly unfair, arbitrary, oppressive and unjust; the decision was made in breach of the rules of natural justice; the decision was made in breach of the applicants’ right to a fair hearing; the said decision was biased and inconsistent with the applicants’ case; the chairperson’s decision constitutes a wrongful exercise of discretion; the chairperson lacked jurisdiction to adjudicate on some of the issues; and that the decision was against the law and without considering all the material before the court.

The applicants' counsel also filed written submission on 22nd May, 2009. After summarizing the background of the application in the submissions, it was contended that there was procedural irregularity as the applicants were denied an opportunity to agitate their claim in the reference; it was also contended that there was procedural impropriety in that the Chairman disregarded the duty to conduct the proceedings as required; that there was a breach of principles of natural justice in that the Chairman failed to accord either party the opportunity to move, state and canvass their case. It was also contended that even if there was a right of appeal, if the applicant is aggrieved in an exceptional way, judicial review jurisdiction can be exercised by the court. Reliance was placed on the English case of **R (ON THE APPLICATION OF SILVASUBRAMNIAM) –VS- WANDSWORTH COUNTY COURT [2003] 2 ALL ER 160.**

It was contended that the applicant's complaint amounts to a complete disregard of the duties of a public officer in the decision making process, so much so that, the possibility of an appeal to a superior court is extinguished. Therefore, to challenge the original decision through appeal cannot be perceived in view of the acts and omissions, of the decision maker at the Tribunal.

The application does not appear to have been opposed, though the application was served on the Business Premises Rent Tribunal on 20th January, 2009, and stamped for such receipt. Hearing notice was also served on the interested party **NAFTARI KITHE** on 16/4/09.

Indeed, even where there are alternative remedies, someone can still come to the judicial review court for relief, if the judicial review remedies are more efficacious. Therefore, the availability of an appeal is not a bar to judicial review proceedings.

The applicant's counsel has relied on the case of **R (ON THE APPLICATION OF SIVASUBRAMANIAM) -Vs- WANDSWORTH COUNTY COURT** (supra), where it was stated-

“However, there may be rare cases where a litigant challenges the decision of a circuit judge to give or refuse permission to appeal on the ground of want of jurisdiction or procedural irregularity such as to constitute a denial of the applicant's right to a fair hearing. If such grounds are made out, a proper case of judicial review will have been established.”

I fully endorse and agree with the above position. It is however, for an applicant to demonstrate the actual defaults in procedure impropriety, or the illegality or lack or excess of jurisdiction with regard to the proceedings being impugned. In Kenya, judicial review remedies are available in the High Court and relate to inferior tribunals, or public officials or institutions. The Tribunal herein is an inferior tribunal, and therefore subject to the judicial review jurisdiction of this court.

Though the application was not opposed, the applicants have been so general in his contentions that this court cannot know what error the Tribunal's Chairman committed, which would invite the judicial review remedy of certiorari. On the allegation that he was denied the opportunity to be heard, there is no indication from the record, or from any particular contention from the applicants, to indicate where and in what circumstances, the applicant or any of the parties was denied the right to be heard. Even on the date of the last order of the Tribunal (**25.8.2008**), the applicant herein was represented by Mr. Mungai, who was recorded as having made his submissions before the Chairman made a finding and the order complained of. It is also not specifically contended that the Chairman did not have the jurisdiction to make the finding or order that she made.

It will be noted that on that 25/8/2008 the Chairperson made the following finding and order-

“Court: From the investigations this is a controlled tenancy. The Act is very clear. The landlord complaint is therefore allowed. Orders of 5/6/2008 are confirmed.

Costs to the tenant.”

The orders of 5/6/2008 referred to above, which were also made in the presence of Mr. Mungai for the

applicants herein, were-

“Status to be maintained. The landlord is restrained and prohibited from evicting the tenant. OCS Shauri Moyo Police Station to protect the tenant from harassment. Order to be taken to Public Health Department City Council. Hearing on 25/8/08.”

I have not been told that any of the above orders is illegal. I have not been told that the Tribunal did not have the jurisdiction to make any of the orders or that it exceeded its jurisdiction in making that order. It is trite that judicial review is concerned with the process and not the merits of a decision – see **COMMISSIONER OF LANDS -VS- KUNSTE HOTEL LTD [1995-1998] EA1**. In my view, the applicants have not demonstrated any of the instances that would justify this court to intervene by granting judicial review remedies, that is the certiorari orders that they prays for. They seem, without saying so, to be challenging the merits of the decision of the Tribunal, which is not within the area of judicial review remedies.

For that reason therefore, this application will not succeed. I dismiss the application and decline to grant the prayers sought. Parties to bear their respective costs.

It is so ordered.

Dated and delivered at Nairobi this 29th day of June, 2009.

George Dulu

Judge.