Republic v Deputy Chairman, Rent Restriction Tribunal; Wangare & another (Exparte Applicants); Mukuha & another (Interested Parties) (Environment and Land Court Judicial Review Application 1 of 2021) [2022] KEELC 13465 (KLR) (22 September 2022) (Judgment)

Neutral citation: [2022] KEELC 13465 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION 1 OF 2021

JM MUTUNGI, J

SEPTEMBER 22, 2022

BETWEEN

REPUBLIC ..... APPLICANT

AND

DEPUTY CHAIRMAN, RENT RESTRICTION TRIBUNAL ..... RESPONDENT

AND

JULIA WANGARE ..... EXPARTE APPLICANT

PHARIS NDUNGU CHEGE ..... EXPARTE APPLICANT

AND

GRACE MUKUHA ..... INTERESTED PARTY

LINET WAIRIMU MUKUHA ..... INTERESTED PARTY

JUDGMENT

1. The *exparte* applicant was granted leave to apply for judicial review on January 25, 2021 and the leave so granted was to operate as a stay of the orders of the Deputy Chairman of the Rent Restriction Tribunal sought to be reviewed. On January 29, 2021 the *exparte* applicant filed the substantive notice of motion dated January 27, 2021. By the application the *exparte* applicant prayed for the following orders: -

    a. That this honorable court do grant an order of *Certiorari* by way of judicial review to the effect that the orders of the Honorable Beatrice Mathenge, Deputy Chairman of the Rent Restriction Tribunal in Nakuru Rent Restriction Case Number 33 of 2017 dated December 10, 2020 and any other order(s) and/or directions made relating to the parties in Nakuru Rent Restriction Case Number 33 of 2017 be moved into the Environment and Land Court of Kenya and be quashed.

b. That this honorable court do grant an order of Prohibition barring the Deputy Chairman of the Rent Restriction Tribunal and/or the Rent Restriction Tribunal from entertaining any further proceedings and/or any further hearing of Nakuru Rent Restriction Case Number 33 of 2017.

c. That the interested parties do pay the Ex parte applicants' costs of this action.

2. The applicant's application was supported on the following grounds set on the body of the application and on the supporting affidavit sworn by Julia Wangare, the 1st *exparte* applicant.

i. The honorable Deputy Chairman of the Rent Restriction Tribunal disregarded section 2 of the *Rent Restriction Act* (Cap 296, Laws of Kenya) which provides that the tribunal had no jurisdiction to entertain a dispute in residential premises where the monthly rent is more than Kshs 2,500. In this case, the Honorable Deputy Chairman gave orders in a dispute where the monthly rent had already been stated by the plaintiffs/landlords themselves as Kshs 25,000/= which is far beyond the tribunal's jurisdiction hence ultra vires the parent Act.

ii. A court cannot confer jurisdiction on itself even where the court does not agree with the parent Act.

iii. The orders granted by the learned Deputy Chairman of the rent restriction tribunal on the December 10, 2022 were made in spite of the ex parte Applicants' preliminary objection that the tribunal lacks jurisdiction.

iv. Instead of the tribunal first establishing whether it has jurisdiction, it made the orders and directed that the issuer of jurisdiction will be decided later hence putting the cart before the horse.

v. Jurisdiction is everything and must be determined at the earliest opportunity otherwise the entire proceedings may end up being a nullity resulting in unnecessary waste of judicial time as well as the parties' time and costs

vi. The Honorable Deputy Chairman of the rent restriction tribunal lacks jurisdiction to hear the matter and therefore the orders made so far are a nullity and proceedings to execute them would be unlawful.

3. Principally the *exparte* applicants contend the Deputy Chairman of the rent restriction tribunal had no jurisdiction to hear and determine the matter before him where the impugned orders were made. The applicants averred that they had raised a preliminary objection, on the question of the jurisdiction of the tribunal but the Deputy Chairman of the tribunal failed to deal with it. The applicants contended the orders made by the Tribunal were a nullity for want of jurisdiction and were therefore amenable to being quashed. The *exparte* applicant further averred the ownership of the subject property where the rental premises were situate was in issue and was subject of a pending suit *vide* Nakuru ELC No 551 of 2016 and that suit required to be determined before the tribunal matter could be proceeded with.

4. The applicants averred that the rent of the premises was Kshs 25,000/= per month which amount the applicants argued was well above the sum of Kshs 2,500/= per month and hence the rent restriction tribunal lacked the jurisdiction to entertain the matter since its jurisdiction was limited to premises where the standard rent did not exceed Kshs 2,500/= per month. The applicants thus asserted the proceedings before the rent restriction tribunal that gave rise to the impugned orders were a nullity and unlawful and ought to be quashed.

5. The interested parties filed a replying affidavit and a further affidavit through their advocates, Waiganjo Mwangi and annexed various pleadings in the tribunal matter Nakuru RRT No 33 of 2017 and Nakuru ELC No 551 of 2016. The interested parties position was that the rent restriction tribunal properly exercised its mandate and jurisdiction when it made the orders that it did. The interested parties contended that the exparte applicants application before this court was premature as they had not exhausted the dispute resolution mechanism spelt out under the *Rent Restriction Act*, Cap 296 of the Laws of Kenya. The interested parties thus contended the application by the applicant constituted an abuse of the court process and the same should be dismissed.

6. The respondent through the Hon Attorney General filed grounds of opposition dated February 9, 2022. The respondent contended it was the rent restriction tribunal that was seized with jurisdiction to deal with the dispute and not this court. The respondent asserted the proceedings before the rent restriction tribunal were legal and valid and the orders emanating therefrom should be upheld. The respondent averred that the application before this court was premature as the applicant had not exhausted the remedies available to them before the rent restriction tribunal and urged the court to dismiss the application with costs.

7. The application was argued by way of written submissions. The exparte applicants filed their written submissions and further written submissions on June 10, 2022 and July 5, 2022 respectively. The interested parties filed their submissions on June 1, 2022 while the respondent filed their written submissions on June 10, 2022.

The exparte applicants submissions

8. The *exparte* applicants submitted that the interested parties case before the rent restriction tribunal was for vacant possession, eviction and recovery of rent in respect of the tenancy premises which as per the pleadings before the Tribunal were rented out at a monthly rent of Kshs 25,000/=. The applicants submitted that by virtue of section 2 (1) (c) of the *Rent Restriction Act*, Cap 296 Laws of Kenya and section 4 (6) of the Act, the Deputy Chairman of the tribunal lacked the jurisdiction to deal with the matter pending before the tribunal. Section 2 (1) of the Act provides: -

> 2.(1) This Act shall apply to all dwelling-houses, other than—
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> (a) excepted dwelling-houses;
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> (b) dwelling-house let on service tenancies;
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> (c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.
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> Section 4 (6) of the Act provides
>
> 6) Save in the exercise of its power under section 5 (1) (a), the jurisdiction of the tribunal presided over by a deputy chairman shall be limited to cases in which the standard rent of the premises which are the subject of the application does not exceed one thousand five hundred shillings; and, subject to that limitation, in respect of any of the functions exercised by a tribunal whilst presided over by a deputy chairman, any reference in this Act to the chairman of a tribunal shall include reference to a deputy chairman.

9. The exparte applicants submitted that the premises that gave rise to the proceedings before the rent restriction tribunal were rented out at the monthly rent of Kshs 25,000/= and therefore clearly fell outside the jurisdiction of the rent restriction tribunal whose jurisdiction was limited to dwelling

premises whose monthly rent did not exceed Kshs 2,500/=. They argued that the tribunal acted in excess of its jurisdiction which rendered its proceedings and decision a nullity. The *exparte* applicants in support of their submissions relied on the cases of *Republic v Tribunal & 2 others Exparte Agatha Njoki Mwangi* (2015) eKLR where Odunga, J (as he then was) while affirming the rent restriction tribunal only had jurisdiction to deal with matters where the "standard rent" did not exceed Kshs 2,500/= per month observed thus:-

> " 29. It is not in doubt that where the "standard rent" exceeds, two thousand five hundred shillings per month, furnished or unfurnished, the provisions of the Act are inapplicable, in which case the rent restriction tribunal has no jurisdiction to determine a dispute arising from such a tenancy.
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> 30. Although the interested party contends that the tribunal is yet to determine the standard rent, it is clear from the proceedings before the Tribunal that the interested party was not seeking an order for ascertainment of the standard rent. The interested party's complaint seems to be increase of rent from Kshs 15,000/= to Kshs 25,000/=. It is therefore clear even if the interested party's case was to be allowed it would still remove the claim outside the jurisdiction of the Tribunal"

10. The *exparte* applicants further relied on the cases of *Republic v Chairman Rent Restriction Tribunal exparte Simon Ngure Ngatia & Another* (2014) eKLR where the courts emphatically held that where the standard rent and/or agreed rent was in excess of Kshs 2,500/= the rent restriction tribunal lacked jurisdiction to entertain any dispute arising from such a tenancy.

Submission by the interested parties

11. The interested parties submitted that the applicants claim that the tribunal lacked jurisdiction was not merited. They asserted that the *exparte* applicants had denied they were paying the rent of Kshs 25,000/= and the standard rent for the premises had not been assessed. They argued the tribunal where the dispute was pending had not as yet determined whether it had jurisdiction and thus the application before this court was premature as the parties had not exhausted the dispute resolution mechanism before the rent restriction tribunal. The interested parties placed reliance on the case of *James Kirugi v Chairman Rent Restriction Tribunal & Another* (2020) eKLR where Munyao, J held that where it is alleged the rent restriction tribunal lacked jurisdiction on the basis that the rent being paid was more than Kshs2,500/= the standard rent had to be demonstrated before the court can find the tribunal lacked jurisdiction. The judge held the view that the rent being paid may necessarily not be the standard rent and that the standard rent has to be ascertained before the court could hold the subject matter was beyond the jurisdiction of the tribunal.

12. The interested parties further submitted that the application constituted abuse of the court process. The interested parties argued that in case the applicants were aggrieved by the orders the tribunal had made they could under the provisions of section 5 (1) (m) of the Act have applied to the tribunal to revoke, vary or amend its decision and/or could have appealed the decision, determination or order under section 8(2) of the Act, which they failed to do. Hence the interested parties submitted the interested parties did not exhaust the remedies provided under the Act before seeking judicial review. They argued that under section 9 (2) of the *Fair Administrative Action Act*, 2015 the applicants were barred from instituting these proceedings as they had not exhausted the internal dispute resolution mechanism provided under the statute.

    Section 9 (2) & (3) of the *Fair Administrative Action Act* provides as follows:-

9(2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct the applicant shall first exchange such remedy before institution proceedings under sub-section (1).

13. The interested parties argued the applicants had ran afoul of the above provisions and there were no exceptional circumstances that would have justified the institution of these proceedings when the internal mechanism built into the Act had not been exhausted. The interested parties for the proposition relied on the cases of *Registered Trustees, Kenya Railways staff Retirement Benefits Scheme v Chairman, Rent Restriction Tribunal & 99 others* (2018) eKLR and *James Kirugi v Chairman, Rent Restriction Tribunal* (supra). In the *Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme case*, the court held: -

> " Under section 9 (2) of the Act, judicial review court is required to refrain from reviewing an administrative action unless the statutory mechanism for appeal or review have been exhausted. Section 9(4) of the Act gives the judicial review court powers, in exceptional circumstances and upon application by the applicant, to exempt an applicant from the statutory obligation to first exhaust the appeal and review mechanism, if the court considers such exemption to be in the interest of justice. It is to be noted that this discretion is not to be exercised by the judicial review court suo moto it is to be exercised on an application by the applicant"

14. The Attorney General in his submissions on behalf of the respondent submitted that there was no evidence to show what the standard rent was as no rent certificate had been exhibited. The respondent submitted that the rent restriction tribunal had the requisite jurisdiction to deal with the subject matter and like the interested party was of the view that even though the applicant may have agreed a monthly rent of Kshs 25,000/= that did not constitute standard rent as envisaged under the Act. The respondent relied on the case of Nairobi HCJR Misc Application No, 366 of 2017 *Republic v The Rent Restriction Tribunal exparte Evans Nyahoro & Another* where the court dismissed an application on the basis that the standard rent had not been demonstrated to enable the court to make a finding as to whether or not the tribunal had jurisdiction. The Attorney General further placed reliance on the case of *James Kirugi v Chairman, Rent Restriction Tribunal & Another* (2020) eKLR cited earlier and relied upon by the interested parties.

The Applicants response

15. The applicants in response to the submissions of the interested parties and the respondent filed supplementary submissions and reiterated that the interested parties by their pleadings had confirmed there was a tenancy agreement and the rent for the premises had been agreed at Kshs25,000/=. The tribunal by its order, had ordered the payment of this rent and not any other assessed rent which according to the applicants denoted that the tribunal had taken this amount to be "the standard rent". The applicants argued the Tribunal had proceeded to order eviction in the event the applicants did not pay the rent arrears calculated on the basis of the monthly rent of Kshs 25,000/=. The applicants argued that the interested parties could not property claim the standard rent had not been ascertained and still proceed to make a claim for payment at the rate of Kshs 25,000/= per month. The applicants contended, if there was any uncertainty as to what the standard rent was, the interested parties ought

to firstly have applied for the determination of what the standard rent was and not to file a claim for recovery of rent and for recovery of possession.

16. The applicants cited the case of *Republic v Chairman, Rent Restriction Tribunal & 2 others Exparte Charles Macharia Mugo* (2019) eKLR to support their submissions that where there was a doubt as to what the standard rent was, there was an obligation to have the standard rent assessed. In the case Okong'o J stated as follows:-

> The interested parties put forward a very strong and persuasive argument that rent of Kshs 16,000/- per month that was being paid by the applicant was an agreed rent and not the standard rent for the suit property. They argued that since the standard rent for the suit property had not been determined, the tribunal had jurisdiction to determine the dispute between the parties as it was not known whether the standard rent for the premises was above Kshs 2,500/= or below.
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> The interested parties' argument is novel, however, in my view, it is not tenable for a number of reasons. First, if the standard rent for the suit property was not known, the first application that should have been brought by the interested parties to the tribunal was one seeking a determination of the standard rent for the suit property and it was after the tribunal had determined the standard rent for the suit property that it could proceed to hear the interested parties' application for vacant possession and rent arrears or lay down its tool on account of lack of jurisdiction. Secondly, if indeed the standard rent for the suit property was not known or had not been determined as claimed by the interested parties and the interested parties strongly believed that the standard rent for the premises was Kshs 2,500/= or below, the interested parties had no basis for claiming a monthly rent of Kshs 16,000/= per month from the applicant. The rent for the premises should have been Kshs 2,500/= or below per month until determined otherwise by the tribunal. The interested parties' argument that the tribunal had jurisdiction to entertain the case that they filed before it is in the circumstances self-defeating.
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> 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 August 1, 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.
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> Having come to the conclusion that the tribunal had no jurisdiction to entertain the claim that was brought before it by the interested parties, it is my further finding that the proceedings before the tribunal and its orders issued on August 21, 2017 were all nullities. This court has power under section 13(7) (b) of the *Environment and Land Court Act, 2011* to grant the prerogatory orders sought by the

applicant. Since the proceedings and the decision of the tribunal were nullities, the same are liable to review by this court.) (emphasis supplied).

17. The applicant urged the court not to follow the decision by Munyao, J in the case of *James Kirugi v Chairman, Rent Restriction Tribunal & Anor* (supra) as it appeared to shift the burden of proof of the tribunal's jurisdiction to the applicants, yet it was the tribunal that had to ascertain it had jurisdiction to entertain the matter before it.

18. The applicants finally submitted the attendant circumstances were such that they were placed in a situation where section 5 (1)(m) or section 8 (2) of the *Rent Restriction Act* were inapplicable to them as the Tribunal had proceeded to make orders without jurisdiction and no appellable decision within the ambit of section 8 (2) of the *Rent Restriction Act* had been made. The applicants therefore averred there were exceptional circumstances as envisaged under section 9(4) of the *Fair Administrative Action Act* which made the present application for judicial review the only viable available option to the applicants.

Analysis, evaluation and determination.

19. I have reviewed and considered the pleadings and rival submissions of the parties. The issues that arise for determination are as follows: -

    1. Whether the tribunal had the jurisdiction to hear and determine the matter filed before it by the interested party vide Nakuru RRT No 33 of 2017?

    2. Whether the orders issued by the tribunal in the case are valid?

    3. Whether the applicants are entitled to the reliefs sought against the tribunal?

    4. Who bears the costs of the suit?

20. In the instant matter it is not in dispute that the 1st *exparte* applicant and the interested parties have had a rent dispute over premises occupied by the 1st *exparte* applicant. The interested parties in the tribunal matter as per the plaint filed therein claimed that they had rent the 1st applicant premises at an agreed monthly rent of Kshs 25,000/= which she had defaulted in payment prompting the filing of the Tribunal matter where they sought recovery of possession, eviction and recovery of rent and mesne profits. The 2nd *exparte* applicant who is husband to the 1st applicant was joined as an interested party in the tribunal matter. The 2nd *exparte* applicant inexplicably equally has a dispute with the interested parties over the ownership of the premises rented to the 1st applicant by the interested parties. The ownership of the premises rented to the 1st applicant is in issue in Nakuru ELC No 551 of 2016 where the interested parties are plaintiffs and the 2nd applicant (husband to 1st applicant) is the 2nd defendant in the suit. It is not explicit when the 1st applicant was rent the premises and/or when the ownership dispute of the premises between the interested parties and the 2nd applicant arose. However, the court is of the view that the matter instituted at the tribunal was separate and distinct from the matter instituted by the interested parties before the ELC court.

21. The primary issue to determine in this application is whether the rent restriction tribunal had jurisdiction to hear and determine the dispute presented before it. Without jurisdiction a court or tribunal cannot do anything and if it purports to do anything, whatever it does and/or any decision it may make would be null and void and of no legal effect. That is why whenever the issue of jurisdiction is raised the court or tribunal should dispose of the issue at the earliest opportunity. In the instant matter the applicants raised of tribunal's jurisdiction *vide* the notice of preliminary objection dated November 30, 2022 filed before the tribunal on December 2, 2020. The preliminary objection on jurisdiction was

not heard and determined by the tribunal. The tribunal on December 10, 2020 in its raft of orders and directions as extracted under direction/order 9 and 10 provided thus:-

9. The preliminary objection raised by the defendant/tenant shall proceed for hearing after the tribunal has confirmed compliance by the defendant/tenant of the order on payment of rent made on September 25, 2017.

10. That the defendant/tenant shall not be granted any audience before the tribunal until she complies with the said order.

22. The tribunal in my view failed to appreciate that once its jurisdiction to deal with the matter was put into question, that also affected any orders it may have made previously in the matter. If it lacked jurisdiction any such orders would be a nullity. The tribunal in my view was obligated to determine the issue of its own jurisdiction in order to continue entertaining the matter. The tribunal could not defer determining the issue of whether or not it had jurisdiction to handle the matter and continue to issue further orders when its jurisdiction had been put to question. In the case of the *Owners And Masters of the Motor vessel "Joey" v Owners and Masters of the motor Tugs "Barbara" and "Steve B"* (2008) I EA 367 the Court of Appeal expressed itself succinctly on the question 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 reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything and without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction"

23. In the present case the interested parties by their own plaint before the tribunal stated that the 1st applicant had rented the premises at Kshs25,000/= and had defaulted in payment of rent. The *Rent Restriction Act*, Cap 296 Laws of Kenya does not apply to dwelling houses whose monthly standard rent exceeds Kshs2,500/=. The interested parties by their own admission let the premises to the 1st applicant at the agreed monthly rent of Kshs25,000/=. This rent was clearly well above Kshs2,500/= in regard to which the Act would apply. The interested parties have argued that the standard rent had not been ascertained and hence the tribunal had jurisdiction. I am unable to appreciate that argument as I do not see how, where the parties had agreed rent at Kshs25,000/= such rent would fall below Kshs2,500/= if the standard rent was assessed so as to bring the same within the jurisdiction of the Tribunal. It is my view that once the parties had agreed the rent at Kshs25,000/= they automatically removed the premises from the application of the *Rent Restriction Act*. I do not consider that applying for the standard rent for the premises to be assessed would alter the position. Would the interested parties revert to seek payment of rent at an amount below Kshs.2,500/= so that the Act may be held to be applicable? I doubt that would be the position. The Act commenced operation in 1959 and there is no evidence that the applicable standard rent has ever been enhanced. The Act is clearly out of touch with reality as one would hardly in the present day find a dwelling house where the rent is below Ksh.2,500/=. One hopes the relevant agencies will in due time rectify such anomalies in our laws.

24. On the issue of jurisdiction it matters not that the parties and/or the court or tribunal have agreed to the jurisdiction of the court or tribunal have agreed to the jurisdiction of the court or tribunal. If the court or tribunal has no jurisdiction, the parties cannot by consent confer it with jurisdiction. Jurisdiction of a court or tribunal is given by the *constitution* and/or statute and cannot be donated by the parties and nor can a court confer upon itself jurisdiction that it does not possess. The Supreme Court of Kenya

in the case of *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 others* (2012) eKLR restated the law that a court's jurisdiction can neither be implied and/or conferred by agreement of parties and/or by judicial craft. Then Supreme Court in the case stated thus:-

> " A court's jurisdiction flows from either the *constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law"

25. The supreme court in the same case went to hold thus:-

> " – the issue as to whether a court of law has jurisdiction to entertain a matter before it, is no one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings?

26. On the facts placed before the tribunal by the parties it was evident that the subject premises that precipitated the dispute were let to the 1st applicant at the agreed monthly rent of Kshs 25,000/=. This clearly removed the premises from the application of the *Rent Restriction Act* and the relationship between the interested parties and the 1st applicant was governed by the tenancy agreement they had entered into but not the Act. The tenancy was uncontrolled and the provisions of the Act were inapplicable to the relationship between the interested parties and the applicants. The tribunal could not exercise jurisdiction over premises that were not controlled under the provisions of the *Rent Restriction Act*. The tribunal lacked jurisdiction over the subject matter and ought not to have entertained the action.

27. Although having come to the determination that the tribunal lacked jurisdiction to entertain the suit before it, that should be sufficient to dispose of this matter, I consider it is necessary to make a comment on the submission that the applicants application was premature and/or it offended the exhaustion principle. The applicants raised the jurisdiction issue well after the proceedings had commenced before the tribunal and all the parties had participated in the proceedings. The tribunal on September 25, 2017 made, orders requiring the 1st applicant to pay the rent for the period of February, 2017 to September, 2017 within 30 days and thereafter to pay from October, 2017 on or before the 10th day of each month pending the hearing of the suit. In default the interested parties were allowed to levy distress. From the record it is not clear whether there were any other proceedings before the tribunal until the 1st applicant filed the notice of preliminary objection dated November 30, 2020 which was heard and orders/directions given on December 10, 2020. The orders/directions given on December 10, 2020 reiterated the orders that the tribunal had given on September 25, 2017 and emphasized that the preliminary objection on jurisdiction would only be heard upon confirmation by the Tribunal that the orders issued on September 25, 2017 had been complied with otherwise the applicants would be denied audience.

28. As observed earlier in this judgment, the Deputy Chairman of the tribunal misdirected himself in deferring hearing and determination of the jurisdiction issue of the tribunal raised by the 1st applicant. The issue went to the core and heart of the matter as without jurisdiction all the proceedings taken by the tribunal were a nullity and so were any orders that may have been issued. By indicating the applicant would have no audience before the Tribunal until she complied with the order for payment of rent, the 1st applicant was denied a right to be heard on a crucial issue. This is in my view constituted an exceptional circumstance which entitled the applicants to come to this court to seek judicial review of the Tribunal's orders. The tribunal had not made an order as relates to the jurisdiction of the tribunal to enable the applicants to lodge an appeal as envisaged under section 8 (2) of the *Rent Restriction Act*. In

the premises it is my determination that the exhaustion doctrine was inapplicable in the circumstances of this matter.

29. In the final analysis it is my determination that the Hon Beatrice Mathenge, Deputy chairman of the rent restriction tribunal acted without jurisdiction and the proceedings before her were a nullity. I accordingly grant an order of certiorari by way of judicial review and hereby quash the orders and/or directions issued by the Hon Deputy Chairman of the tribunal in Nakuru RRT No 33 of 2017 on December 10, 2020. I further grant an order of prohibition barring the rent restriction tribunal from entertaining any further proceedings and/or any further hearing of Nakuru RRT No 33 of 2017. The cost of the application are awarded to the exparte applicants.

JUDGMENT DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22ND DAY OF SEPTEMBER, 2022.

J M MUTUNGI

JUDGE