



Republic v Chairman, Rent Restriction Tribunal & another; Matson Auctioneers (Interested Party); Wainana (Exparte) (Judicial Review 2 of 2021) [2022] KEELC 3403 (KLR) (6 June 2022) (Judgment)

Neutral citation: [2022] KEELC 3403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW 2 OF 2021**

BM EBOSO, J

JUNE 6, 2022

BETWEEN

REPUBLIC APPLICANT

AND

CHAIRMAN, RENT RESTRICTION TRIBUNAL 1ST RESPONDENT

GEOFFREY KURIA 2ND RESPONDENT

AND

MATSON AUCTIONEERS INTERESTED PARTY

AND

JOSEPH MUTURI WAINANA EXPARTE

JUDGMENT

1. Through a notice of motion dated 28/6/2021, the *ex parte* applicant, Joseph Muturi Wainaina, seeks a judicial review order of *certiorari* quashing all proceedings and orders made on 12/2/2021 in Rent Restriction Tribunal (Nairobi) Case No 122 of 2021. He further seeks an order of prohibition restraining the Tribunal against hearing and determining the said case. The motion is supported by the *ex parte* applicant's affidavit sworn on 29/6/2021; the statement of facts dated 23/4/2021; and the verifying affidavit sworn by the *ex parte* applicant on 23/4/2021. The application is unopposed.
2. The case of the *ex parte* applicant is that he is the proprietor of Land Parcel Number Ruiru/Ruiru East Block 7/649 [the suit property]. The 2nd respondent resides in the suit property at a monthly rent of Kshs 65,000. The 2nd respondent instituted the above case against him in the Tribunal and obtained *ex parte* orders against him. It is his case that the Tribunal should not have entertained the case because:



- (i) the 2nd respondent had deposed in the supporting affidavit that there was no tenancy relationship between the two of them and contended that his landlord was one Clement Kungu Waibara; and
 - (ii) that the 2nd respondent had disclosed to the Tribunal that he was paying a monthly rent of Kshs 65000. The *ex parte* applicant contended that it was clear from the above facts that the Tribunal had no jurisdiction to entertain the dispute nor issue the impugned *ex parte* orders.
3. I have considered the unopposed application. In the absence of any opposition, the only question which falls for determination in the application is whether the *ex parte* applicant has established a proper case for grant of the judicial review orders.
4. The *ex parte* applicant exhibited an official search indicating that the relevant land register reflected him as the registered proprietor of the suit property. He also exhibited a supporting affidavit sworn on 10/2/2021 and filed by the 2nd respondent in the above Tribunal Case. The 2nd respondent had deposed at paragraph 3 of the exhibited affidavit that his landlord was one Clement Kungu Waibara and not the *ex parte* applicant. He had exhibited an undated tenancy agreement between him and the said Clement Kungu Waibara, indicating that the agreed monthly rent was Kshs 65000.
5. The jurisdiction of the Rent Restriction Tribunals established under Section 4 of the [Rent Restriction Act](#) is defined by the Act. First, the tribunals deal with tenancy disputes only when there are subsisting tenancy relationships. Where there is no subsisting tenancy relationship between the parties to the dispute, the tribunal has no jurisdiction. The proper fora where the dispute should be adjudicated, in such circumstances, are the civil courts established under the [Constitution](#). This court therefore agrees with the *ex parte* applicant that the 2nd respondent having unequivocally deposed that there was no tenancy relationship between him and the *ex parte* applicant, the Tribunal should not have entertained the dispute.
6. Secondly, when the standard rent in a tenancy relationship exceeds Kshs 2,500 per month, the Tribunal has no jurisdiction. Our courts have time and again stated that whenever it emerges from the materials presented to the Tribunal that the agreed rent is more than Kshs 2500 per month, the first business of the Tribunal is to assess the standard rent to establish whether or not it has jurisdiction to entertain the dispute. Our courts have stated that in such circumstances, the Tribunal should refrain from issuing injunctive orders in the dispute until it has ascertained that it has jurisdiction to entertain the dispute.
7. There is no evidence to suggest that the Tribunal adhered to the above principle and procedure. The result is that this court is satisfied that the *ex parte* applicant has demonstrated that the Tribunal proceeded to adjudicate and issue *ex parte* orders in a dispute where, based on the materials before it, it had no jurisdiction to entertain the dispute. It is therefore my finding that the *ex parte* applicant has established a proper case for grant of the judicial review orders sought in the application.
8. In the end, the court issues the following orders.
 - a. An order of *certiorari* is hereby issued quashing all proceedings and orders made in Nairobi Rent Restriction Tribunal Case No 122 of 2021; Geoffrey Kuria v Joseph Muturi Wainaina and Matson Auctioneers.
 - b. The said Tribunal is hereby prohibited against entertaining a dispute between the said parties unless the Tribunal is presented with a formal tenancy or lease agreement between the said parties and the standard rent is first assessed and established to be within the limit of Kshs 2,500.
 - c. There will be no order as to costs of this suit.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 6TH DAY OF JUNE
2022**

B M EBOSO

JUDGE

In the Presence of: -

Ms Waweru for the Applicant

Court Assistant: Ms Lucy Muthoni

