



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

JUDICIAL REVIEW NO. 2 OF 2018

**IN THE MATTER OF AN APPLICATION BY BASHIR MUSSA HAJJI
FOR ORDERS OF MANDAMUS PROHIBITION AND CERTIORARI TO
COMPEL OR TO PROHIBIT THE BUSINESS PREMISES RENT TRIBUNAL
TO CEASE HEARING AND OR DETERMINING THE DISPUTE REGARDING
PREMISES KNOWN AS ARABIAN DELIGHT RESTAURANT AND OR TO QUASH
THE DECISION BY THE BUSINESS PREMISES RENT TRIBUNAL CONTINUING
TO HEAR AND OR DETERMINE THE DISPUTE RELATING TO PREMISES
KNOWN AS ARABIAN DELIGHT RESTAURANT, NAROK, BETWEEN BASHIR
MUSSA HAJI(LANDLORD AND ABDUL KADER MOHAMED(TENANT)**

AND

**IN THE MATTER OF SECTIONS 13,18(C), 19 AND 21 OF
THE ENVIRONMENT ANDLAND COURT ACT**

AND

**IN THE MATTER OF SECTION 3(2) OF THE LANDLORD AND TENANT (SHOPS,
HOTELS AND CATERING, ESTABLISHMENTS) ACT AND IN THE MATTER OF
RULE (VIII) OF THE TERMS AND CONDITIONS OF THE SCHEDULE LANDLORD
AND TENANT (SHOPS, HOTELS AND CATERING ESTABLISHMENTS) ACT**

AND

IN THE MATTER OF SECTIONS 3 OF THE DISTRESS FOR RENT ACT

AND

**IN THE MATTER OF AN APPLICATION BY BASHIR MUSSA HAJI FOR PREROGATIVE
ORDERS AGAINST THE BUSINESS PREMISES RENT TRIBUNAL IN THE MANNER
OF HANDLING, HEARING OR DETERMINING THE LANDLORD AND TENANT**

DISPUTE BETWEEN ABDUL KADER MOHAMMED AND BASHIR MUSSA HAJI

AND

IN THE MATTER OF BUSINESS PREMISES RENT TRIBUNAL BPRT

CASE NO. 113 OF 2017(WRONGLY REFERRED TO BPRT NO. 113 OF 2018)

BETWEEN

ABDUL KADIR MOHAMED T/A

ARABIAN DELIGHTS RESTAURANT.....TENANT

-VERSUS-

BASHIR HAJL.....LANDLORD

AND

IN THE MATTER OF BUSINESS PREMISES TRIBUNAL: BPRT CASE NO. 15 OF 2018

BETWEEN

ABDUL KADER MOHAMED T/A

ARABIAN DELIGHTS RESTAURANT.....TENANT

VERSUS

BASHIR HAJL.....LANDLORD

**IN THE MATTER OF BUSINESS PREMISES RENT TRIBUNAL HANDLING A MATTER THAT IS RES JUDICATA AND OR
HANDLING A DISPUTE IN A BIASED AND PREJUDICIAL MANNER TO THE EXPARTE APPLICANT**

BETWEEN

REPUBLIC.....APPLICANT

AND

THE BUSINESS PREMISES

RENT TRIBUNAL.....RESPONDENT

EXPARTE

BASHIR MUSSA HAJI

AND

ABDUL KADER MOHAMMED T/A ARABIAN DELIGHTS

RESTAURANT.....INTENDED INTERESTED PARTY/APPLICANT

RULING

There are two applications that are before the court for determination namely the interested party's Notice of Motion dated 10th September, 2018 and a Notice of Preliminary objection filed by the exparte applicant in opposition to the aforesaid and before I deal with the application for joinder of the interested party I will wish to address the said preliminary objection which shall determine the fate of the Application for joinder of the interested party.

The exparte applicant contends in his objection that the Application for joinder by the interested party is abuse of the process of the court as one does not require a substantive order of joinder and that the proposed interested party is already a party to the suit herein as he is a tenant

and lastly that the court does not have jurisdiction to revisit and set aside an order for Judicial Review.

It is the ex parte/applicant contention that the intended interested party was served with the application and he was at liberty to respond to the Application pursuant to the provisions of order 53 Rule (3) (4) and 6 of the Civil Procedure Rules and that there was no need for the instant application.

On whether leave to institute Judicial Review proceedings can be set aside the ex parte applicant contends that the intended interested party has not outlined what were the facts that were misrepresented to the court that warranted the grant of the said leave and that no reasons have been put forth to warrant the variation and setting aside of the order for leave to commence Judicial Review proceedings.

The proposed interested party in his response stated that the application before the court is proper and made pursuant to the provisions of order 1 Rule 10 of the Civil Procedure Rules and all other enabling provisions of laws and that the mere action of wrong provision does not invalidate the entire application.

The proposed interested party contends that he should have been enjoined in the suit property in the first instance and that being a party before the tribunal his business could be affected.

On whether the court has jurisdiction to set aside the orders for leave to commence Judicial Review proceedings, the proposed interested party contends that the court has jurisdiction which have been authoritatively decided where the court can review and set aside its own orders.

The proposed interested party avers that there were material misrepresentations as the said application was never served upon the proposed interested party and thus proceedings taken without his knowledge.

Having perused the preliminary objection raised by the ex parte/applicant and the submissions filed the issue for determination is whether: -

1. The Application for joinder is an abuse of the court process
2. Whether I should review and set aside and/or vacate orders for grant of leave

On whether the application for joinder is an abuse of the court I find that from the pleadings before me even though the ex parte applicant says the proposed interested party does not need to formally apply to the court, from the pleadings I find he is a tenant in the suit premises and the proceedings will directly and substantially affect him and I don't know why the ex parte applicant did not join him as interested party.

From the application I find that since any orders which will be made will directly affect it will be just and fair for him to be enjoined to the proceedings if the ex parte applicant did not enjoin him he was at liberty to bring the application for joinder. I don't see him as a busy body but one who has serious stake in the matter and for this reasons I find that the application before me is proper and I will thus disallow the grounds of the objection.

On the issue whether the court can review, set aside or vacate its orders the court has discretion. More so where there was misrepresentation or where the continued stay of such orders will lead to injustice. In the instance application I see that the grant of the ex parte order was proper and I will thus decline to vacate them.

The upshot of the above is that I will dismiss the preliminary objection dated 17th September, 2018 as the same lacks merit and allow the notice of motion dated 10th September, 2018 and direct that proposed interested party be enjoined as an interested party in the proceedings.

DATED, SIGNED and DELIVERED in open court at NAROK on this 4th day of July, 2019

Mohammed Noor Kullow

Judge

4/7/19

In the presence of:-

Mr Langat holding brief for Nyangau for the applicant/respondent

Mr Kinyanjui for interested party/applicant

CA:Chuma

Mohammed Noor Kullow

Judge

