



Mohammed v Rent Restriction Tribunal, Nairobi & 2 others; Attorney General & another (Interested Parties) (Environment and Land Judicial Review Miscellaneous Application 7 of 2023) [2025] KEHC 4558 (KLR) (Judicial Review) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION 7 OF 2023**

**RE ABURILI, J
APRIL 8, 2025**

BETWEEN

STEVE GATOTO MOHAMMED APPLICANT

AND

RENT RESTRICTION TRIBUNAL, NAIROBI 1ST RESPONDENT

ROSEMARY WAITHERA BORU 2ND RESPONDENT

UPSTATE KENYA AUCTIONEERS 3RD RESPONDENT

AND

THE ATTORNEY GENERAL INTERESTED PARTY

LAW SOCIETY OF KENYA INTERESTED PARTY

RULING

1. A brief history of this matter is as important as the decision itself. The matter was first initiated before the Constitutional and Human Rights Division vide Constitutional Petition No. 20 of 2023, before being transferred to this Division by L. N. Mugambi J on 6/7/2023.
2. When the matter landed in this Court, on 7/9/2023, J. Ngaah J gave directions by way of a ruling dated the even date in the presence of the applicant herein Steve Gatoto Muhammed to the effect that the application was not certified urgent, that the application was not seeking judicial review orders or leave to apply for judicial review orders. He observed that the dispute arising from the Rent Restriction Act would best be handled in the Environment and Land Court. He nonetheless directed that the application be served upon the respondents for inter partes directions on 18/10/2023.



3. On 13/9/2023, the applicant had filed another application which the learned Judge gave directions on to the effect that the applicant seemed to have misconstrued the directions given on 7/9/2023 for 18/9/2023 and found no reasons to depart from the Court's directions given on 7/9/2023. He directed the matter to be mentioned on the 18/9/2023 as earlier directed.
4. On 18/9/2023, only the applicant and the 2nd respondent's counsel appeared and the 2nd respondent's counsel, Mr. Ngaira informed the court that his client had been served via WhatsApp on 14/9/2023 with incomplete documents and sought leave to obtain the application and pleadings from the court and 21 days to respond to the applicant's application.
5. The court in its directions granted the 2nd respondent leave to obtain proceedings from the court file and to file a response within 14 days of that date and directed the application dated 5/9/2023 to be heard on 18/10/2023. On the latter date, the applicant was online and he sought time to serve the 1st respondent while Ms Onkundi who stated that he had just been instructed sought for more time to respond and the other party's counsel Ms Wanjohi stated that she was not ready to proceed. The court fixed the matter for hearing on 6/12/2023. On the latter date, the applicant was not present and the court fixed the hearing for 6/3/2024 and the Deputy Registrar was directed to serve the rest of the parties who were not present. On the latter date, the presiding Judge was on leave.
6. The matter was mentioned before Chigiti J SC who fixed it for mention on 22/5/2024 on which latter date none of the parties were in court so the matter was slated for hearing on 1/7/2024, on which date the presiding Judge was not sitting so the matter was fixed for mention on 8/7/2024. On the latter date, the matter was rescheduled for 23/9/2024 as none of the parties were in court. On the latter date, only the applicant attended court and the court fixed the hearing date for 18/11/2024 on which latter date the court was not sitting and again the matter was mentioned before Chigiti J SC and fixed for 18/3/2025.
7. However, when I reported to the station, the Assistant Deputy Registrar Hom Isabelle Kimani reported that the registry had issues with the question of whether the applicant could prosecute his case and or file documents as a pauper since the order on pauperism that he had, only allowed him to file a single petition. I directed the registry to serve the applicant who was served with notice to appear and he did appear on 4/2/2025. He explained to me his predicament that he had no job, that he lived in the streets of Nairobi because all that he had was stolen from him and that he was not able to engage in any gainful employment. He urged the court to allow him to prosecute his case as a pauper using the orders given to him on 30th June, 2023 before the Constitutional and Human Rights Division.
8. I allowed the applicant to proceed with the matter herein as a pauper and directed the Deputy Registrar to serve notices upon all the other parties to appear on 11/3/2025 so that the court could give directions on all the pending applications to pave way for the hearing.
9. On the latter date, none of the respondents appeared. The applicant was present physically and he submitted that he had reviewed all his pending applications and realized that they were repetitive. He then elected to proceed to urge his applications, abandoning some like the one dated 27/2/2024 which he stated had not been filed in the CTS but only presented to court physical copies.
10. That is how I came to find this long winding matter on my transfer to this Division of the High Court.
11. The above background is essential for the appreciation of the trend in this matter where the applicant is a prose litigant.
12. In his submissions he categorized his matter into three issues namely:



1. Judicial Review Application
 2. Constitutional Petition
 3. A criminal matter after MCCR 772/2023 is called into this court.
13. The applicant then proceeded to argue his application dated 4/7/2023 and sought orders to call RRT/192/2023 from the Rent Restriction Tribunal for orders of certiorari to issue to quash the proceedings of the Rent Tribunal for gross illegality. He submitted that the Tribunal lacked statutory jurisdiction to countenance the said matter and that there was also procedural impropriety and that due process of the law was ignored. He submitted that he was never served with the documents being the plaint, exparte order and necessary documentary evidence placed before the Tribunal. He further submitted that the order for vacant possession and levying of distress for rent were issued against him on 7/11/2023 after this case had been filed into court.
 14. That all his possessions were locked in the premises, which was the genesis of the 2nd application dated 5/9/2023 filed on 6/9/2023 seeking for status quo ante to be imposed and to enjoin the National Police Service and an archive of the plea taking in Ngong MCCR E772/2023. He however submitted that he already took plea in Ngong Magistrate's court and he was given a hearing date of 11/1/2025, a Saturday.
 15. That when he went to that court early, he discovered that it was fixed for 13/1/2025 and that he could not go to court at Ngong because he did not have fare as he was an indigent person living in the streets of Nairobi. He submitted that previously, the same court gave him dates which were not in the court file making him fail to attend court as a result of which the warrants of arrest were issued against him. He conceded that he never attended court on 13/1/2025 and was requesting this court to call the criminal file and remand him in this court. He showed the court a letter sent by OCS Ong'ata Rongai to Officer in Charge Milimani Law Courts to arrest him when he is here at Milimani attending to his cases.
 16. The applicant submitted that we can safely close the application dated 12/9/2023 because the prayers are covered in the other two applications referred to above. He prayed that the Ngong Criminal Case be transferred to the Criminal Division of this court and the charge sheet be quashed. The applicant also prayed that the application dated 27/2/2024 seeking for recusal of the Presiding Judge of this court from hearing this case, be closed as it has been overtaken by events of the Judge being transferred.
 17. He submitted and urged the court to consider the prayers sought in his application dated 30/1/2025 as he did not have his copy of the application.
 18. He concluded his submissions by urging this court to call for the Rent Tribunal Case and the Criminal case file from Ngong Law Courts. He also urged the court to look at his written submissions which he had filed and make an appropriate decision. Finally, the applicant recited to this court the following statement which he said was written by Thomas Sower:

“Justice or injustice, are characteristics of a process of fair fight is one in which both combatants observe the Rules regardless of which that leads to a draw or a one sided beating”.

Thomas Sower.

Analysis

19. I have considered the applications by the applicant and his written and oral submissions. The issue for consideration is whether the application seeking the calling into this court the Rent Restriction case for purposes of quashing those proceedings and orders that had the applicant's property taken and sold



on account of rent arrears to his landlady and further, the order for calling into this court the criminal proceedings from Ngong Law Courts where he is charged with the offence of assaulting his alleged landlady who distrained for rent are merited prayers.

20. I first appreciate the applicant for his industry and intelligence in matters the law and his right to access justice. I do not know what level of education he has but he impressed the court as an extremely intelligent and educated person. He may however not be that knowledgeable in matters jurisdiction of the court but he understands why he is before the court and he expressed himself very eloquently.
21. The applicant laments that he was never given the opportunity to be heard by the rent restriction tribunal before the distress for rent orders were made against him. He blames the Milimani High Court Registry staff and the staff of the ELC at Milimani in ELC Petition 6 of 2023 for being extortionists in the name of assisting him yet they were sabotaging the course of justice due to alleged institutionalized corruption that debilitates the Kenyan Judiciary which led to him and his family being displaced and dispossessed of the place he called home, a three bedroomed mansionate which had been demolished and instead of the police containing the situation, they had instead arrested and charged him in Ngong court thereby subjecting him to torture and making him an internally displaced person. He accuses the Rent Restriction Tribunal of acting without jurisdiction in issuing orders that led to his eviction and loss of all his property thereby rendering him destitute.
22. That much is what I can gather in summary, from the applicant's written submissions.

Determination

23. Having considered all the above, I note that the respondents are the Rent Restriction Tribunal, the applicants' Landlady and the auctioneers who distrained for rent and carted away the property of the applicant in a rent dispute between the applicant tenant and his landlady the 2nd respondent, who obtained orders from the 1st Respondent Tribunal.
24. My attention is also drawn to the order of 13th March 2023 issued by the chairman of the Rent Restriction Tribunal Hon. Hillary K. Korir granting leave to the alleged landlady Rosemary Waithera Boru to distress for rent from the applicant herein in RRT Case no. E197 of 2023, using a licensed auctioneer and also directing the OCS Ongata Rongai Police Station to provide security or assistance to the auctioneers.
25. Later, the landlady in question filed an application seeking orders directing the applicant to remove from the landlady's premises, some unserviceable motor vehicles not belonging to the applicant and which could not be distraint to recover rent.
26. The applicant complained against the OCS Ongata Rongai Police Station to the Internal Affairs Unit Director, National Police Service following the distress for rent which he considered to be unlawful eviction from the premises. He copied the correspondence to Independent Policing Oversight Authority, (IPOA) and complained that he had also been verbally assaulted by the police during the eviction process.
27. In the said complaint letter dated, 19/6/2023, the applicant also acknowledged that there was a suit pending before the Environment and Land Court on the same dispute and directions were due on 25th May, 2023, the same day that he was invaded by the purported landlady Rosemary Waithera and her Aunt who also assaulted the applicant and on 26/5/2023, she returned with police officers and forcibly evicted him from the premises and arrested him claiming that the previous day he had assaulted the landlady.



28. It is the above scenario that led to the applicant being charged with assault at Ngong law Courts and his approaching the Court for remedies. The Investigating Diary in respect of the criminal charges is part of the documents filed in this court by the applicant. He also filed the charge sheet in Ngong Law Courts where he was released on cash bail of Kshs 20,000. The applicant also filed statements of witnesses in the criminal case before Ngong Law Courts in which the landlady claimed to be managing her father's rental premises with power of Attorney and had served the applicant notice to vacate the premises for non-payment of rent from 2022 and when he failed to move out, she served him with suit papers from the Tribunal which issued distress for rent orders. That the applicant had filed a case in the High Court to stop his eviction, which case was dismissed on 25th May 2023.
29. The question I pose is whether this court has jurisdiction to hear and determine the merits of any of the prayers sought before this court by the applicant.
30. Jurisdiction is the power conferred on a court of law to hear and determine disputes and it is conferred by *the Constitution* and statutes. Parties cannot confer jurisdiction on a court and neither can a court of law arrogate itself jurisdiction that it is devoid of. In some instances, *the Constitution* expressly bars courts from entertaining certain disputes.
31. Jurisdiction of the High Court is derived from Article 165 of *the Constitution* and from statutes. The same Article 165(5)(b) of *the Constitution* also limits the jurisdiction of the High Court in the following terms:
- (5) The High Court shall not have jurisdiction in respect of matters—
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
- (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
32. Article 162(2) of *the Constitution* which is referred to in Article 165(5) (b) above establishes the specialized courts namely, the (a) Employment and Labour Relations Court and the Environment and Land Court. The latter court is to hear and determine disputes relating to (b) the environment and the use and occupation of, and title to, land.
33. This, *the Constitution* which is the supreme law of the land expressly ousts jurisdiction of the High Court in hearing and determining disputes stated therein. That being the case, this court cannot arrogate itself such jurisdiction.
34. In that regard, concerning matters landlord and tenant and therefore rent restriction and distraint for rent, section 8 of the *Rent Restriction Act* is on appeals from the Rent Restriction Tribunal and provides that:
- Appeals:
- 8
- (1) Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.
- (2) An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases—
- (a) in the case of an order under subsection (5) of section 6(b) or



- (b) on any point of law; or
- (c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law.

35. Section 8 (1) of the [Rent Restriction Act](#) provides that no appeal shall lie from any decision of the Rent Tribunal except as provided by sub-section (2) of the section. Section of 8 (2) of the [Rent Restriction Act](#), herein guarantees a Right of Appeal to any party, who is aggrieved and/or dissatisfied with the ruling and/or decision of the tribunal.
36. Additionally, Section 13(2) of the [Environment and Land Court Act](#) outlines the disputes which the Environment and Land Court has powers to hear and determine, and subsection 4 further confers the ELC with the appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
37. In the instant case, the appellant moved this court to challenge the decision of the Rent Restriction Tribunal after his Petition vide Mohammed v Rent Restriction Tribunal, Nairobi & 2 others (Environment & Land Petition 6 of 2023) [2023] KEELC 17673 (KLR) (25 May 2023) (Judgment) was struck out on 25/5/2023 for non-exhaustion of remedies available at the Rent Restriction Tribunal. In the said petition dated March 19, 2023, the applicant sought the following reliefs:
- i. That this honourable court finds that the 1st respondent as having no jurisdiction over the suit premises and declares the proceedings in Rent Restriction Tribunal No 197 of 2023 a nullity.
 - ii. That as a consequence of relief (i) this honourable court issue orders vacating the 1st respondent's orders of March 13, 2023 against the petitioner.
 - iii. That this honourable court issues an injunction against the 1st, 2nd and 3rd respondents barring them, their agents, servants and representatives from taking any action meant, connected or relating to the levying of rent on the premises plot Ngong/Ngong/ 6646 without the express authority of Mr Nelson Bolly Boru.
38. Contemporaneous with the filing of the petition, the petitioner filed an application dated March 20, 2023 seeking orders staying and or vacating the 1st respondent's orders of March 13, 2023.
39. I have accessed the full decision from the Environment and Land Court through the Kenya Law Case Search engine and read the decision in full. E.K WABWOTO J who heard and determined the petition filed by the present applicant had this to say when striking out the petition and notice of motion for want of jurisdiction to hear and determine the petition and the notice of motion:
- a. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts.
 - b. In the instant case, the petitioner seeks reliefs which can be adequately addressed by the Rent Restriction Tribunal. The tribunal has powers to hear and determine the dispute at hand. On the basis of the foregoing, this court finds that the court's jurisdiction has been prematurely invoked. The petitioner ought to pursue his claim fully through the tribunal and in compliance with the law.
 - c. Having so found, a consideration of the rest of the issues in this matter will not aid the petitioner in any way. The court also declines to award costs and opts to end this matter here.



- d. In the end, the petition dated March 19, 2023 and notice of motion dated March 20, 2023 are hereby determined as follows: -
- a. The petition dated March 19, 2023 and the notice of motion dated March 20, 2023 are hereby struck out
 - b. Each party to bear own costs.
 - c. Orders accordingly.
40. The Environment and LAND Court declined jurisdiction on account of exhaustion of remedies doctrine stating that the Rent Restriction Tribunal had powers to set aside its orders or to stay the same and to hear the applicant's complaint. Further, the law is clear that decisions of the Rent Restriction Tribunal are appealable to the Environment and Land Court.
41. I have already reproduced the ouster clause in Article 165(5) of *the Constitution*. The High Court is expressly prohibited from hearing and determining disputes exclusively reserved for the Environment and Land Court, the Employment and Labour Relations Court and the Supreme Court. The Article specifically provides that:
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- (5) The High Court shall not have jurisdiction in respect of matters—
 - (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
42. This court cannot, therefore arrogate itself the jurisdiction that is expressly taken away by *the Constitution* and donated to another superior Court. The applicant had the opportunity to return to the RRT as advised by the ELC Judge or to appeal that decision of the ELC to the Court of Appeal but not to come to the High Court whether by way of a constitutional petition or judicial review.
43. The High Court at Article 165(6) of *the Constitution* has supervisory jurisdiction over subordinate courts including Tribunals but not over superior Courts. The Article provides:
- 165
- (6) 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.
44. The ELC is a superior Court established pursuant to the provisions of Article 162 (2) (b) of *the Constitution* and the Article stipulates as follows:
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- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).
 - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (a) employment and labour relations; and
 - (b) the environment and the use and occupation of, and title to, land.



(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

45. It is settled law that a court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Further, that a decision made by a court of law without proper jurisdiction amounts to nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.
46. In the locus classicus case on jurisdiction of Owners of the Motor Vessel “Lillian S’ v Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA. relying, inter alia, on the treatise by John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 that defines the court’s jurisdiction held as follows:
- “...Jurisdiction is everything. 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...”
47. The Supreme Court In the Matter of Interim Independent Electoral Commission [2011] eKLR, constitutional application No 2 of 2011 stated that jurisdiction of courts in Kenya is regulated by *the Constitution*, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision pronounced, quite authoritatively that:
- “...a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.”
48. In Samuel Kamau Macharia and Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, application No 2 of 2011, the Supreme Court reiterated its holding on a court’s jurisdiction.
49. Again, in the matter of the Interim Independent Electoral Commission (supra) at paragraph 68 of its ruling, the Supreme Court held as follows:
- “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 itself jurisdiction exceeding that which is conferred upon it by law”.
50. With the above holdings in mind, and this Court not being an appellate court of the ELC nor does it exercise supervisory jurisdiction over the Rent Restriction Tribunal, I find and hold that this court as the High Court lacks jurisdiction to hear and determine the issues raised by the applicant, arising from the Rent Restriction Tribunal.
51. On whether this court should call for the criminal case at Ngong Law Courts and transfer it to this court- High Court at Milimani, or arrest the applicant and present him to that court, I observe that a judicial review court exercises neither civil nor criminal jurisdiction. The jurisdiction of this court in all matters where it has jurisdiction to hear and determine is hybrid jurisdiction. This court cannot transfer the case from Ngong Law courts to any other court as that is the power vested in the Criminal Division of the High Court that exercises criminal jurisdiction.
52. On whether this court can exercise judicial review supervisory jurisdiction to call for the criminal case file from Ngong Law Courts, no legal basis has been laid to sufficiently persuade this court to call for the trial court record from Ngong law courts to this court and for what purpose. The applicant can



approach the criminal court and request for transfer of the case to another court closer to him if he has no fare to travel to Ngong Law Courts. Additionally, this court finds no basis for arresting the applicant as requested. This Court exists to protect and promote human rights.

53. For all the above reasons, I find the applicants' applications which were argued together to have been filed in a court which is devoid of jurisdiction to hear and determine the issues raised. The applications and the entire proceedings are struck out for want of jurisdiction with no orders as to costs as the applicant was allowed to sue as a pauper.
54. I would however implore the Director of Public Prosecutions to engage the complainant in the criminal case at Ngong Law Courts in MCCR E772/2023 to consider Alternative dispute resolution mechanisms in resolving the criminal matter between the applicant and the complainant land lady, noting that the applicant is psychologically affected by the events leading to his eviction and distress for rent and therefore his capacity to follow the criminal proceedings are, in my humble view, from my own observations, impaired such that he may not follow those proceedings and he is likely to suffer injustice unless some interventions are made to safeguard his rights as an accused person.
55. This file is closed.

DATED, SIGNED & DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF APRIL, 2025

R.E. ABURILI

JUDGE

