



Oyiera v Rent Restriction Tribunal & 2 others (Judicial Review Application E012 of 2024) [2024] KEHC 5834 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E012 OF 2024**

RE ABURILI, J

MAY 23, 2024

**IN THE MATTER OF THE RENT RESTRICTION ACT
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI AND PROHIBITION**

BETWEEN

HABWE OYIERA APPLICANT

AND

THE RENT RESTRICTION TRIBUNAL 1ST RESPONDENT

MARYGORETTY OWITI 2ND RESPONDENT

OCS MASENO POLICE STATION 3RD RESPONDENT

RULING

1. This court having reviewed the application dated 21st May, 2024 filed under certificate of urgency, grounds and supporting affidavit and the annexures thereto, it makes the following findings.
 - a. That the application is not certified urgent.
 - b. That this court is devoid of any jurisdiction to hear and determine the dispute between the parties hereto.
2. On why this court has declined jurisdiction to hear and determine the judicial review application, the case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR settled the question of jurisdiction of courts and tribunals in the following terms:

“jurisdiction is everything. Without it, a court has no power to make one more step. ...”



3. The jurisdiction of the Environment and Land Court is donated by Article 162(2) of the Constitution of Kenya which provides that:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- (b) the environment and the use and occupation of, and title to, land.”

4. Section 13(2) of the Environment and Land Court Act outlines the disputes which the Environment and Land Court has jurisdiction over. Section 313(4) further confers the Court with the appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

5. Additionally, section 13(7) of the Environment and Land Court Act sets out the orders that the Court may make including prerogative orders which latter are judicial review orders.

6. In the instant application, the Applicant has moved this court for stay of the decision of the 30th April, 2024 and on subsequent dates stated in the application subject of this ruling made by the Rent Restriction Tribunal pending hearing and determination of the judicial Review proceedings herein and leave to apply for judicial review orders of certiorari to call into this court and quash the said proceedings before the Rent Restriction Tribunal.

7. Section 4 of the Rent Restriction Act establishes the Tribunal, while Section 8 provides that:

(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; 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, and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact...

8. With the above provisions in mind, and with the express prohibition in Article 165(5) (b) of the Constitution that the High Court shall not exercise jurisdiction reserved for the Courts established under Article 162(2) of the Constitution and the Supreme Court, I find that this would be arrogating itself of jurisdiction exclusively reserved for the Environment and Land Court by statute which is the Rent Restriction Act. Jurisdiction is conferred by statute and the Constitution not by parties.

9. For the above reasons, I find the application dated 21st May, 2024 to be incompetently filed before this Court and on the court’s own motion, I hereby decline jurisdiction and strike out that application. The applicant to file pleadings before the court with jurisdiction.

10. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF MAY, 2024

R.E. ABURILI

JUDGE

