



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

JUDICIAL REVIEW NO. 12 OF 2021

GEORGE ODONGO MWIMALI EX-PARTE APPLICANT

-VERSUS-

THE CHAIRMAN, RENT RESTRICTION TRIBUNAL...RESPONDENT

RULING

(Application seeking leave to commence judicial review proceedings for certiorari to quash proceedings before the Rent Restriction Tribunal; applicant claiming that the Tribunal does not have jurisdiction because the rent payable exceeds the standard rent limit in the Rent Restriction Act; Tribunal being granted power to assess standard rent and there being an appellate mechanism; court not persuaded that this is a fit case for judicial review as the ex parte applicant can follow the procedure in the Act)

1. The application before me seeks the following orders :-

- a. That this application for leave to bring judicial review proceedings be certified as urgent and be heard ex parte on a priority basis.
- b. That leave be granted to the applicant to apply for:-
 - i. An order of certiorari to remove into the High Court for purposes of quashing all proceedings and any orders made or alternatively such of the proceedings as relate to the order made on the 9th August 2019 in the case pending before the Rent Restriction Tribunal at Mombasa in RRT Case No. 91 of 2016 between Mulili Nthiwa –vs- George Mwimali (hereinafter referred as “the said case”) and;
- c. That the grant of such leave do operate as a stay of all proceedings in question arising out of or relating to the said Rent Restriction Tribunal Mombasa Case No. 91 of 2019 between Mulili Nthiwa –vs- George Mwimali pending the hearing and determination of the substantive application for judicial review.
- d. That any other or further and consequential orders and/or directions be given.
- e. That costs of the application be costs in the cause.

2. The application is supported by the affidavit of the ex parte applicant. From it, I have gleaned that the ex parte applicant is landlord of Mulili Nthiwa (who for purposes herein I will refer to as tenant or the interested party) in a dwelling house. The rent payable is Kshs. 5,500/=. On 5 August 2019, the tenant filed a suit before the Rent Restriction Tribunal, established under the Rent Restriction Act. His case was that despite being up to date with rent, the ex parte applicant proceeded to impose a padlock at the residence, thus effectively locking him out. In the suit, he asked for various orders including the order for a declaration that the locking of the house was unlawful. Together with the suit, the tenant filed an application to have the premises re-opened pending hearing of the suit. The ex parte applicant has annexed an order dated 9 August 2019 granting the orders to have the premises re-opened. I do not have any other record of the proceedings before the Tribunal, save that in this application, it is said that the matter is coming up for hearing on 29 September 2021.

3. The main ground upon which this application is based is that the Tribunal does not have jurisdiction in the matter. The argument is that the tenancy is not controlled since the rent payable is Kshs. 5,500/= yet the statutory limit is Kshs. 2,500/=.

4. I have considered the application. Before one may commence judicial review proceedings, it is a prerequisite that leave first be granted. This is provided for in Order 53 Rule Rule 1 which provides as follows :-

[Order 53, rule 1.] Applications for mandamus, prohibition and certiorari to be made only with leave.

1. (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

(3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.

(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

5. Grant of leave to commence judicial review proceedings is thus within the discretion of the court and it is not in all cases that the court will grant leave to commence judicial review proceedings. The court must be satisfied that judicial review proceedings are the appropriate avenue to address the grievance raised. One of the issues that I think the court needs to consider is whether there exists alternative remedies to the applicant.

6. The applicant herein complains that the dispute involves rent beyond Kshs. 5,500/= yet the statutory limit is Kshs. 2,500/=. The ex parte applicant must have had in mind Section 3 (a) of the Rent Restriction Act, which defines standard rent as follows :-

“standard rent” means—

(a) in relation to an unfurnished dwelling-house—

(i) if on the 1st January, 1981, it was let unfurnished, the rent at which it was lawfully so let, the landlord paying all outgoing;

(ii) if on the 1st January, 1981 it was let furnished, the rent at which it was lawfully so let, less a sum at a monthly rate not exceeding one percent of the value (as determined by the tribunal) of the furniture, excluding any soft furnishings, linen, cutlery, kitchen utensils, glass-ware and crockery, and a sum not exceeding two percent of the value (as determined by the tribunal) of any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, in respect of the furniture which was in the dwelling-house on the 1st January, 1981, the landlord paying all outgoing;

(iii) if on the 1st January, 1981, it was not let, or not erected, or the tribunal is unable to determine whether or not it was on that date let or erected, a rent to be assessed by the tribunal at a monthly rate of not less than one and one-quarter and not more than one and one-half percent of the cost of construction and the market value of the land, the landlord paying all outgoing;

(b) in relation to a furnished dwelling-house—

(i) if on the 1st January, 1981, it was let furnished, the rent at which it was lawfully so let, the landlord paying all outgoing;

(ii) if on the 1st January, 1981, it was let unfurnished, the rent at which it was lawfully so let plus a sum at a monthly rate not exceeding one percent of the value (as determined by the tribunal) of the furniture, excluding any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, and a sum not exceeding two percent of the value (as determined by the tribunal) of any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, in respect of the furniture of the dwelling-house, the landlord paying all outgoing;

(iii) if on the 1st January, 1981, it was not let, or not erected, or the tribunal is unable to determine whether or not it was on that date let or erected, the standard rent which would be applicable if it were unfurnished, plus a sum at a monthly rate not exceeding one percent of the value (as determined by the tribunal) of the furniture, excluding any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, and a sum not exceeding two percent of the value (as determined by the tribunal) of any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, the landlord paying all outgoing;

7. It must be understood that “standard rent” as defined in the Rent Restriction Act, is not the same as the money equivalent of the same sum. (See decision in the case of *James Kirugi vs Chairman, Rent Restriction Tribunal & Another (2020) eKLR*). What is standard rent is a question of fact to be determined by the tribunal after taking evidence in the matter. It is not possible, within the evidence adduced so far, for me to determine what standard rent in this matter is. That is a matter that the ex parte applicant ought to present before the Tribunal to determine. In fact, Section 5 of the Rent Restriction Act provides that one of the powers of the Tribunal is “(a) to assess the standard rent of any premises either on the application of any person interested or of its own motion.” It follows that, the ex parte applicant can proceed to the Tribunal and apply to have an assessment of standard rent so that the Tribunal can know whether or not it has jurisdiction in the matter. It is within the Tribunal that it is best to first determine the “standard rent”. If a determination is made, which does not please the ex parte applicant, he can then appeal to this court under Section 8 (2) of the Rent Restriction Act. My view, is that where there is an inbuilt statutory structure to address a grievance, complete with an appellate mechanism, the court should be slow to allow an ex parte applicant leave to commence judicial review proceedings, unless it is clear to the court, that the laid down mechanism cannot do justice given all the surrounding circumstances. I am not persuaded that this is the situation in this case.

8. For the above reasons, I decline to grant leave to commence the proposed judicial review proceedings. I proceed to dismiss this application but make no orders as to costs.

9. Orders accordingly.

DATED AND DELIVERED THIS 23 DAY OF SEPTEMBER 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

In the presence of:

Ms Sidinyu holding brief for Mr Malombo for the ex-parte applicant.

Court Assistant; Wilson Rabong'o