



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**JUDICIAL REVIEW CASE NO. 6 OF 2020**

**IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE ACT ( CAP 21) & THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF RENT RESTRICTIONS ACT, CAP 296 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE RENT RESTRICTION TRIBUNAL CASE NO. 1132 OF 2020**

**AND**

**IN THE MATTER OF AN ORDER ISSUED ON THE 6<sup>TH</sup> AUGUST 2020, BY THE CHAIRMAN RENT RESTRICTION TRIBUNAL**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI , PROHIBITION AND MANDAMUS**

**BETWEEN**

**ESTHER VICTORIA WANJIKU MAHORO.....APPLICANT**

**AND**

**MARY WAMBUI GITHINJI.....1<sup>ST</sup> RESPONDENT**

**LUCY WANGARI GITHIKA.....2<sup>ND</sup> RESPONDENT**

**RICHARD MAKARA GITAU.....3<sup>RD</sup> RESPONDENT**

**THE CHAIRMAN,RENT RESTRICTION TRIBUNAL.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

By a Chamber Summons Application dated **16<sup>th</sup> October 2020**, by the Ex Parte Applicant she seeks for orders that;

***a) An order of Certiorari to remove into this Honourable Court and quash the order dated 6<sup>th</sup> August 2020, issued by the Chairman, Rent Restriction Tribunal, Nairobi.***

b) *An order of prohibition against the Respondents from proceedings and pursuing the realization and implementation of the impugned court order issued on the 6<sup>th</sup> August 2020.*

c) *An order of prohibition against the 4<sup>th</sup> Respondent from collecting any rents and or making any determination of the impugned Application by the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents.*

d) *An order of mandamus directed to the Respondents to withdraw / and or cancel the order and its consequences thereto until the disputed issues are agreed upon.*

e) *Any other orders deemed expedient and just in the circumstances.*

In her Supporting Affidavit, **Esther Victoria Wanjiku Mahuro** averred that she is the bonafide wife of the late **Joseph Mahuro Maina**. That a **Succession Cause** is yet to be filed with regards to the Estate of the Deceased, so that whoever has a claim can justify his/ her entitlement. That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents filed an Application at the **Rent Restriction Tribunal**, being Case No. **1132 of 2020**, and obtained an Order that her authorized agent namely **Pause Shelter Ltd**, should remit the rent collected to the Tribunal, until the Application is heard and determined. That the said rents are in reference to a house that stands on **Juja Kalimoni 10/92**, whereby there are several rooms, whose rents are about **Kshs.4,000/-** and above. That the 4<sup>th</sup> Respondent gave an order that the said rent should be deposited to the tribunal until the matter is heard and determined.

Further, that since her husband passed on, she has been fully dependent on the rents collected from the property as her only source of income in taking care of the family's day to day needs. That the said Order meant that she is deprived off her only source of livelihood and thereby exposing her family to hardship, especially during the hard economic times. That there is a pending matter at the **Chief Magistrates Court at Muranga**, being **CMCC No. 118 of 2020**, between the Applicant and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and a **Court Order** issued to that effect and the Respondents have intentionally refused to raise their grievance if any through that pending Court case. That she has been advised by her Advocate which advice believes to be true, that the **Rent Restriction Tribunal**, has no jurisdiction to hear and entertain the Respondents Application and or to issue the said order. Further that she is greatly aggrieved and overly prejudiced by the action taken by the 4<sup>th</sup> Respondent in issuing orders which are in contravention of the **Fair Administrative Act** and natural justice.

That she is apprehensive that the Application and the orders issued are meant to punish her and her family and the Respondents have no claim to the Applicant's property and neither does it form part of the Estate of the Deceased. That if the orders sought are not granted, the Applicant will be exposed to unnecessary hardship, strenuous life and loss of a lifetime investment.

In her Statutory Statement dated **16<sup>th</sup> October 2020**, the Ex Parte

Applicant averred that the exercise of power by the 4<sup>th</sup> Respondent was **ultra vires**, since the **tribunal** cannot determine **succession matters** of an estate of the Deceased, under Cap 160 Laws of Kenya. That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have no legal capacity to file the Application that gave rise to the **Orders** issued at the Tribunal. Further that the monthly rents collected prohibit the tribunal from issuing such Orders, rendering the tribunal incapacitated and the property **L.R Juja /Kalimoni**, is exclusively registered in the Applicant name, and her son and does not form part of the estate of the Deceased. That unless the Court intervenes, the Applicant would suffer irreparable harm

The Judicial Review Application was not opposed as the Respondents failed to file any documents in opposition. However, this being a Judicial Review Application, the Ex Parte Applicant is required to prove her case on the required standard of balance of probabilities, even though her evidence remains uncontroverted.

The Judicial Review application was canvassed by way of written submissions, which the Court has carefully read and considered. The Court too has also read and considered the Chamber Summons, the Verifying Affidavit and finds that the issue for determination is **whether the Ex Parte Applicant is entitled to the Judicial Review Orders sought**.

The Purpose of Judicial Review was set out in the case of **Municipal Council of Mombasa...Vs...Republic, Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007(2002) eKLR**, where the Court of Appeal held that:-

*“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at. Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.*

Further, circumstances under which orders of Judicial Review can be issued were elaborated by

***Irrationality***, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

***Procedural impropriety***, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehidswi... Vs...Secretary of State for the Housing Department (1990) AC 876*”.

What Judicial Review Orders entails was elaborated in the case of *Kenya National Examination Council...Vs...Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No.266 of 1996*, where the Court held that: -

***“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See Halsbury’s Law of England, 4<sup>th</sup> Edition vol.1 at Pg.37 paragraph 128.”***

From the foregoing cases, the applicable law in cases of Judicial review have already been established and this Court will now consider the above applicable law and further consider the available facts to determine whether the *Exparte Applicant* is deserving of the orders sought.

The Applicant has sought for orders of Certiorari to quash the decision of the 4<sup>th</sup> Respondent in that the said decision was made **ultra vires**. An order of Certiorari can be made if the Court is satisfied that a tribunal made a decision in excess of its jurisdiction, and further the Court can also issue an order of prohibition prohibiting the said tribunal from proceedings with the such proceedings.

The Court had already noted that the Applicant’s contention remains uncontroverted. The Applicant contended that she was served with an **Order** from the **Rent Restriction Tribunal**, Ordering her and/or her agents to remit the rents for the houses in the suit property to the tribunal. However, the rent of the said properties are about **Kshs.4,000/=** and that the said rent is way beyond the pecuniary jurisdiction of the Rent Restriction Tribunal. As the allegations remain uncontroverted and in the absence of any other contrary assertion, the Court has no option but to believe that the rent of the said property was **Kshs.4,000/=** and above per house.

The Jurisdiction of the **Rent Restriction Tribunal**, to hear and determine matters that relate to dwelling houses is to be found under the provisions of **Section 2(1) of the Rent Restriction Act, Chapter 296 Laws of Kenya**, which provides that

**2. (1) This Act shall apply to all dwelling-houses, other than - (a) excepted dwelling-houses;**

**(b) dwelling-house let on service tenancies;**

**(c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.**

The Court has already held that the dwelling houses in question have a standard rent of **Kshs. 4,000/=** and above. The provisions of Law are clear that the said tribunal does not have jurisdiction, to deal with rent beyond **Kshs. 2500/=** per month. Therefore, it follows that in adjudicating over a matter which is in excess of its jurisdiction, the tribunal acted **ultra vires**. See the case of **Johakim Abayo ...Vs... Mokuia Damacline Nyamoita [2021] eKLR** where the Court held that

***“21. This court has in the past pronounced itself on how the Tribunal should proceed whenever it is faced with a dispute where the agreed or prevailing monthly rent is more than Kshs 2,500. [see Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & another (interested parties) Exparte Charles Macharia Mugo [2019] eKLR. For the umpteenth time, it is emphasized that the first business of the Tribunal in such circumstances is to assess standard rent with a view to establishing whether it has jurisdiction or not. Unless and until standard rent is ascertained, the Tribunal has no jurisdiction to entertain or issue orders in a dispute where the agreed or prevailing rent is more than Ksh 2,500 per month. It is not lost to this court that it is with this in mind that Parliament, through the Act, gave the Tribunal powers to assess rent on its own motion or upon application whenever it is seized of a dispute. The Tribunal assumes adjudicatory jurisdiction in such circumstances only when it has ascertained that the standard rent falls within the limits set by the statute. It ought to be understood that the Constitution has established other relevant adjudicatory bodies where tenancy disputes involving higher monthly rents are to be adjudicated.***

***22. Arising from the foregoing, I find that the Tribunal erred in holding that it had jurisdiction to entertain the claim in the suit before it in a context where the parties had agreed on a monthly rent of Kshs 20,000/= during the subsistence of the tenancy.”***

From the foregoing, the Court finds and holds that the 4<sup>th</sup> Respondent had no jurisdictions to hear and determine the matter before it involving the suit property. Having found that the 4<sup>th</sup> Respondent acted in excess of its jurisdiction, then any orders that was made ought to be quashed and the proceedings struck out. Further, the 4<sup>th</sup> Respondent is hereby prohibited from proceeding with the matter.

Having carefully read and considered this **Judicial Review Application** together with Affidavits and **Written Submissions**, the Court finds that the said Judicial Review Application is **merited** and the same is allowed entirely with costs to the Ex Parte Applicant.

**It is so ordered.**

**DATED, SIGNED AND DELIVERED AT THIKA THIS 8TH DAY OF OCTOBER, 2021.**

**L. GACHERU**

**JUDGE**

**Court Assistant – Lucy**