



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC JR MISC APPLICATION NO. 50 OF 2019**

**FORMERLY JR. MISC. APPLICATION NO. 299 OF 2019**

**IN THE MATTER OF**

**AN APPLICATION FOR ORDERS IN THE NATURE OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF**

**SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF**

**ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF**

**THE RENT RESTRICTIONS TRIBUNAL CASE NO.1001 OF 2018 SAMUEL**

**MAINA MUNENE –VS-GATANGA MUGITIRI COMPANY LIMITED**

**AND**

**IN THE MATTER OF**

**AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORAI AND PROHIBITION**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**=VERSUS=**

**THE CHAIRMAN, RENT RESTRICTION TRIBUNAL...1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**GATANGA MUGITIRI COMPANY LIMITED.....EX PARTE APPLICANT**

AND

SAMUEL MAINA MUNENE.....INTERESTED PARTY

**JUDGEMENT**

1. This is the Notice of motion dated 23<sup>rd</sup> July 2020 brought under order 53 of the Civil Procedure Rules, Section 8 and 9 of the Law Reform Act Cap 26 Laws of Kenya, Section 2(1)(c) of the Rent Restriction Act Cap 296, 1A, 1B & 3A of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks orders:-

***1. That this honourable court be pleased to grant an order of certiorari to quashing the proceedings, ruling and consequential orders of the respondent chairman in Nairobi Rent Tribunal Case No 1001 of 2018 Samuel Maina Munene vs Gatanga Mugitiri Company Limited.***

***2. That this honourable court be pleased to grant an order of prohibition restraining the 1<sup>st</sup> respondent from hearing and/or determining Nairobi Rent Tribunal Case No 1001 of 2018 Samuel Maina Munene vs Gatanga Mugitiri Company Limited.***

***3. That costs of this application be provided for.***

3. The grounds are on the face of the application and are set out in paragraphs 1 to 10.

4. The application is supported by the affidavit of Dickson Kangethe Njuguna, one of the Directors of the Exparte Applicant sworn on the 23<sup>rd</sup> July 2020.

5. The Respondent who were duly served with the Application neglected and/or failed to file responses to the said application.

6. On the 8<sup>th</sup> June 2021, the court directed that the Substantive motion be canvassed by way of written submissions.

**The Exparte Applicant's submissions**

7. They are dated 10<sup>th</sup> June 2021. The jurisdiction of the Rent Restriction Tribunal is provided for by Section 2(1)(c) of the Rent Restriction Act (Cap 296 Laws of Kenya). The Rent Restriction Tribunal is a statutory body established under Section 4 of the Rent Restriction Act, Cap 296 Laws of Kenya with the mandate of determining disputes between landlords and tenants of protected tenancies, which are residential buildings whose rent does not exceed Kshs.2,500/=.

8. The subject rent herein is Kshs.25,000/= per month and the tribunal has no jurisdiction to entertain the matter. Despite filing a preliminary objection at the tribunal the same was heard and dismissed.

9. Without jurisdiction, a court has no power to make one more step, therefore the proceedings of the tribunal are a nullity.

10. The applicant is the owner of the premises known as Gatanga Mugitiri Company Limited which contains a residential house while the Interested Party herein is a tenant paying a sum of Kshs.25,000/- per month. The 1<sup>st</sup> Respondent has no jurisdiction to preside over the matter.

11. The 1<sup>st</sup> Respondent dismissed the Applicant's preliminary objection which challenged the tribunal's jurisdiction on 14<sup>th</sup> August 2019 holding that the parties apply for standard rent even after the Interested Party admitted to paying rent of Kshs.10,000/- in the pleadings at the tribunal. This decision by the tribunal is therefore clearly bad in law and it ought to be quashed.

12. The *locus calssicus* on jurisdiction is the celebrated case of **Owners of the Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1**. The Supreme Court of Kenya echoed this principle in **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR**. It has also put forward the cases of **Bosire Ongero vs Royal Media Services [2015] eKLR; Alvin Kamande Njenga vs Gacheru [2016] eKLR; Republic vs Chairman, Rent Restriction Tribunal & 2 Others Ex Parte Agatha Njoki Mwangi [2015] eKLR; Republic vs Rent Restriction Tribunal Exparte Simon Ngure Ngatia & Another [2014] eKLR; Republic vs Chairman Rent Restriction Tribunal & Another Exparte Ezekiel Machogu & 3 Others [2013] eKLR**.

13. The Chairman delivered an ultra vires Ruling on 14<sup>th</sup> August 2019 which the Applicant seeks to have it quashed by this honourable court. It also prays for orders of prohibition restraining the 1<sup>st</sup> Respondent from hearing and/or determining Nairobi **Rent Tribunal Case No 1001 of 2018; Samuel Maina Munene vs Gatanga Mugitiri Company Limited**.

14. It prays that the application be allowed.

15. I have considered the notice of motion dated 23<sup>rd</sup> July 2020, the affidavit, together with the annexures. I have considered the written submissions and the authorities cited. The issues for determination are:-

*(i) Whether the Tribunal has jurisdiction to hear and/or determine Nairobi Rent Tribunal Case NO 1001 of 2018; Samuel Maina Munene vs Gatanga Mugitiri Company Limited.*

*(ii) Is the Exparte Applicant entitled to the reliefs sought?*

*(iii) Who should bear costs of this Application?*

16. It should be noted that despite being served the Respondents neglected to file any responses.

17. Section 2(1) of the Rent Restriction Act, Cap 296 Laws of Kenya provides that:-

*“(1) This Act shall apply to all dwelling-houses, other than:-*

*(a) excepted dwelling houses*

*(b) dwelling-houses let on service tenancies.*

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

18. It is the Exparte Applicant’s case that Interested Party is its tenant paying Kshs.25,000/- per month. That it was on this basis that Interested Party sued the Exparte Applicant in the Tribunal. The Interested Party had been in arrears which as at October 2019 stood at Kshs.515,000/- and continues to be in arrears.

19. It is further the Exparte Applicant’s case that it filed a preliminary objection challenging the jurisdiction of the Tribunal. The same was heard and ruling delivered by the Chairman on 14<sup>th</sup> August 2019 who dismissed the preliminary objection holding that parties apply for standard rent.

20. The Exparte Applicant has annexed copies of invoices and records which confirm that the Interested Party was paying Kshs.25,000/- per month. In the case of **Owners of Motor Vessel “Lilian S” vs Caltex Oil Kenya Ltd [1989] KLR 1** Justice Nyarangi held as follows:-

*“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*

*Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority.*

*“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limit of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the action and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction, but except where the court or tribunal has given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”.*

21. This was echoed by the Supreme Court of Kenya in **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & Others [2012] eKLR** where it stated thus:-

*“(68) 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 to its jurisdiction exceeding that which is conferred upon it by law”*

22. It is clear from Section 2 (1) (c) of the Rent Restriction Act, that the Tribunal lacked jurisdiction to entertain the case when rent was more than Kshs.2,500/= per month. In the case of **Republic vs Chairman, Rent Restriction Tribunal & 2 Others Exparte Agatha Njoki Mwangi [2015] eKLR** G. V. Odunga stated that:-

*“It is not in doubt that where the “standard rent” exceeds “two thousand five hundred shillings per month, furnished or unfurnished”, the provisions of the Act are inapplicable in which case the Rent Restriction Tribunal has no jurisdiction to determine a dispute arising from such a tenancy.....It was submitted on behalf of the Applicant that under section 2(1) of the Rent Restriction Act, the Act applies to dwelling houses other than those which have a standard rent exceeding tow thousand five hindered shillings per month, furnished or unfurnished. Since the subject rent is Kshs.15,000/- per month, it was submitted that*

*the Tribunal has no jurisdiction to entertain the matter.....Although the interested party contends that the Tribunal is yet to determine the standard rent, it is clear from the proceedings before the Tribunal that the interested party was not seeking an order for ascertainment of the standard rent. The interested party's complaint seems to be the increase of rent from Kshs 15,000.00 to Kshs 25,000.00. It is therefore clear that even if the interested party's case was to be allowed, it would still remove the claim outside the jurisdiction of the Tribunal".*

23. Similarly in **Republic vs Chairman Rent Restriction Tribunal; Exparte Simon Ngunge Ngatia & Another [2014] eKLR**; E. Murithi J stated thus:-

*"In the present case, the Interested Party had in the proceedings that she filed in the Rent Restriction Tribunal, Mombasa RRT Case No. 112 of 20113, admitted through her supporting affidavit sworn on the 12<sup>th</sup> September 2013 that the monthly rent payable was Ksh.8500/- which way beyond the standard rent limitation of Ksh.2500/- for the application of the Rent Restriction Act. The tenancy was not a protected tenancy under the Rent Restriction Act and the Tribunal had, accordingly, no jurisdiction to entertain the suit.....".*

24. In conclusion, I find that the Tribunal lacked the jurisdiction to hear and determine **Tribunal Case No 1001 of 2018; Samuel Maina Munene vs Gatanga Mugitiri Company Limited** hence the ruling dated 14<sup>th</sup> August 2019 was a nullity.

25. The Exparte Applicant is entitled to the reliefs sought.

26. I find merit in the notice of motion dated 23<sup>rd</sup> July 2020 and I granted the orders sought namely:-

*(a) That an order of certiorari is hereby issued to remove and to deliver to this honourable court for quashing and are hereby quashed the proceedings, ruling and consequential orders of the Chairman in Nairobi Rent Tribunal Case NO 1001 of 2018; Samuel Maina Munene vs Gatanga Mugitiri Company Limited.*

*(b) That an order of Prohibition is hereby issued restraining the 1<sup>st</sup> Respondent from hearing and determining Nairobi Rent Tribunal Case No 1001 of 2018; Samuel Maina Munene vs Gatanga Mugitiri Company Limited.*

*(c) Each Party shall bear own costs.*

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 25TH DAY OF NOVEMBER 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Ms Swaka for the Exparte Applicant

No appearance for the Respondent/Interested Party

Steve - Court Assistant