



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTION AND JUDICIAL REVIEW DIVISION

MISC. CIVIL APPLICATION NO. 75 OF 2016 (JR)

**IN THE MATTER OF: AN APPLICATION BY FATMA SUFI TO APPLY FOR JUDICIAL
REVIEW FOR ORDERS OF CERTIORARI**

AND

IN THE MATTER OF: THE RENT RESTRICTION ACT CAP 296

AND

**IN THE MATTER OF: THE RENT RESTRICTION TRIBUNAL AT MOMBASA RRT CASE
NO. 175 OF 2016 BETWEEN RAMA MAZERA & LOICE WAMUYU- VS- FATMA SUFI & 2
OTHERS**

AND

**IN THE MATTER OF: A DECISION OF THE CHAIRMAN OF THE RENT RESTRICTION
TRIBUNAL SITTING AT MOMBASA ON 29TH AUGUST 2016**

FATMA SUFI.....EX-PARTE APPLICANT

VERSUS

1. RAMA MAZERA

2. LOICE WAMUYU MUKUMBU

3. CHAIRMAN, RENT RESTRICTION TRIBUNAL.....RESPONDENTS

AND

1. AAMA AGENCIES

2. JOHNSTONE K. MULI T/A KITHEMU AUCTIONEERS....INTERESTED PARTIES

RULING OF THE COURT

Application

1. By an Amended Notice of Motion dated 2nd November 2016 and filed under Section 8 and 9 of the Law Reform Act (Cap 26) and Order 53 Rule 3 of the Civil Procedure Rules and pursuant to leave granted by this Court on 5th October 2016, the applicant seeks the following orders:

- a) 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 29th August 2016 in the case pending before the Rent Restriction Tribunal at Mombasa in **RRT CASE NO. 175 of 2016** between Rama Mazera & Loise Wamuyu Mukumbu vs. Fatma Sufi & 2 Others.
- b) Any other or further and consequential orders and/or directions be given.

The Application was supported by the statutory statement dated 4th October 2016 and the verifying affidavit sworn by **FATMA SUFI** on 4th October 2016.

2. The ex-Parte applicant alleges that she is the Landlady of Plot No. 11367 situated at Nyali where the 1st and 2nd Respondents are her tenants. The ex-parte applicant further alleges that the 1st and 2nd Respondents pay a monthly rent of Kshs 21,000/=.
3. The ex-Parte Applicant alleges that the 1st Respondent defaulted in payment of his monthly rent a situation that necessitated the applicant to levy distress for rent.
4. The ex-parte Applicant's case is that the 1st and 2nd Respondent filed **RRT CASE NO. 175 of 2016** with the Rent Restriction Tribunal at Mombasa and the tribunal issued an injunction restraining the landlord from removing and or carrying away their household goods or in any other manner howsoever interfering with their quiet possession.
5. The ex-parte Applicant further alleges that the Rent Restriction Tribunal did not have requisite statutory jurisdiction to issue an injunction or similar remedy. Further, the ex-parte Applicant alleges that this matter does not involve controlled premises and the Tribunal does not have the statutory jurisdiction to investigate, make any orders and/or grant any relief in respect of dispossession of or eviction from controlled premises.
6. The ex-parte Applicant alleges that the Rent Restriction Tribunal in receiving, entertaining and hearing this matter acted in excess of its jurisdiction and contrary to Section 4 and 5 of the Rent Restriction Act.

Response

7. The 3rd Respondent responded by way of replying affidavit sworn by **EMMANUEL M. MAKUTO**, Litigation Counsel for the Attorney General. The 1st and 2nd Respondents did not respond to the application.
8. Mr. Makuto depones that the ex-Parte Applicant has not exhausted all the remedies available under Section 9(2) of the Fair Administrative Actions Act and that the Applicant has not appealed nor applied to set aside the orders complained of.
9. Mr. Makuto states that the Applicant has not done an assessment of standard rent for the suit premises as provided under Section 5(1) of the Rent Restriction Act, Cap 296, Laws of Kenya. Counsel further deponed that the Rent Restriction Tribunal has jurisdiction over all premises whereof the standard rent does not exceed two thousand shillings pursuant to Section 5(3) of the Rent Restriction Act.
10. Mr. Makuto states that the 1st and 2nd Respondents are protected by virtue of Section 5(7) of the Rent Restriction Act and therefore the Rent Restriction Tribunal has jurisdiction to hear and determine the

dispute and issue orders in **RRT Case No. 175 of 2016** and urged the court to dismiss the application.

Hearing

11. When the Application came up for hearing on 27th October 2016, the parties agreed to canvass the application by way of written submissions. On 17th May 2017, the ex-parte Applicant and the 3rd Respondent highlighted their submissions in open court.

12. Mr. Malombo, Counsel for the ex-parte Applicant, submitted that Section 2 of the Rent Restriction Act provides that its provisions extend to all dwelling houses other than “*dwelling houses which have a standard rent exceeding two thousand five hundred (2,500) per month furnished or unfurnished*”. Counsel submitted that the dispute between the ex-parte Applicant and the 1st and 2nd Respondents involves a dwelling house which attracts a monthly rent of Kshs 21,000/= according to the tenancy agreement dated 4th December 2015 duly executed by both parties and therefore the Rent Restriction Tribunal sitting at Mombasa did not have jurisdiction to entertain proceedings in **RRT Case No. 175 of 2016** nor did it have jurisdiction to issue an order of injunction on 29th August 2016 restraining the ex-parte from interfering with the 1st and 2nd Respondents’ quiet possession. Counsel cited the case of **REPUBLIC VS. THE CHAIRMAN RENT RESTRICTION TRIBUNAL & ANOTHER EX PARTE EZEKIEL MACHOGU & 3 OTHERS [2013] eKLR** where Majanja J held that the Rent Restriction Tribunal lacked jurisdiction to hear and determine a dispute relating to a dwelling house whose rent per month was Kshs. 3,000/= and issued an order of Certiorari directing that the decision of the Rent Restriction Tribunal at Nairobi in **RRT No. 534 of 2012** be forthwith removed to the High Court and quashed.

13. Mr. Makuto, counsel for the 3rd Respondent, submitted that the suit premises was a residential house falling within the category of dwelling houses under the Rent Restriction Act. Counsel further submitted that there was no proof that the suit premises falls within the bracket of houses exempted from application of the Rent Restriction Act at Section 2(1) of the Act as the ex-parte Applicant has not proved that the standard rent for the suit premises exceeds Kshs. 2,500/=.

14. Mr. Makuto submitted that there was no Gazette Notice showing that the suit premises had been exempted by the Minister from application of the Rent Restriction Act. Counsel submitted that the standard rent is set by the Tribunal under Section 5 (1) (a) of the Rent Restriction Act which provides that “*the tribunal shall have power to assess the standard rent of any premises either on the application of any person interested or of its own motion*”.

15. Mr. Makuto submitted that the Rent Restriction Tribunal has the jurisdiction to grant the orders complained of by virtue of Section 30 of the Rent Restriction Act which confers on the tribunal the same jurisdiction and powers as the High Court which has the power and authority to grant temporary orders of injunction pursuant to Section 63 (c) of the Civil Procedure Act and Order 40 Rule 2 of the Civil Procedure Rules. Counsel referred the court to the case of **RENT RESTRICTION TRIBUNAL VS. RAVAL EX PARTE MAY FAIR BAKERIES LTD, HC [1985] KLR 167** where it was held that:

“one of the powers of the Tribunal is to investigate complains relating to the tenancy and it has the same jurisdiction and powers in civil matters as conferred upon the High Court including that of granting injunctions”.

Determination

16. Having carefully analyzed this application and the arguments raised by the parties, I find that the issues for determination are:

a) Whether the Rent Restriction Tribunal sitting at Mombasa had jurisdiction to hear and determine RRT Case No. 175 of 2016 and grant the orders complained of by the ex-parte Applicant.

b) Whether this court has the powers to grant orders sought in this application.

Whether the Rent Restriction Tribunal sitting at Mombasa had jurisdiction to hear and determine RRT Case No. 175 of 2016 and grant the orders complained of by the ex-parte Applicant

17. Section 2 of the Rent Restriction Act provides that its provisions extend to all dwelling houses other than:

a) Expected dwelling houses.

b) Dwelling house let on service tenancies.

c) Dwelling houses which have a standard rent exceeding two thousand five hundred per month, furnished or unfurnished.

18. It is not in contention by either party that the suit premises was a dwelling house, what is in contention is whether the rent which was payable i.e. Kshs 21,000/= was “*standard rent*” thus exempting the premises from application of the Rent Restriction by virtue of Section 2(c) above.

19. Section 3 of the Rent Restriction Act defines “*standard rent*” as:

a) “in relation to an unfurnished dwelling house

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

Section 5 (1) (a) of the Rent Restriction Act provides that the Tribunal shall have power to;

“assess the standard rent of any premises either on the application of any person interested or of its own motion”.

20. The Rent Restriction Tribunal is a creature of the statute and thus has jurisdiction as specifically conferred upon it by the statute. The Rent Restriction Tribunal provides that its provisions shall apply to standard rent or assessment thereof which does not exceed monthly rent of Kshs. 2,500/=. The issue then is whether the rent payable of Kshs 21,000/= is standard rent.

21. According to the Rent Restriction Act, the Rent Tribunal may assess the standard rent either on its own motion or on application by any interested person. None of the parties herein had applied to the tribunal to assess the standard rent of the suit premises neither did the case before the tribunal call for assessment of the standard rent. The rent was therefore as agreed between the ex-parte Applicant and the 1st and 2nd Respondents in their tenancy agreement and hence the suit premise was not subject to the definition of standard rent prescribed by the Act. This being the case, the Rent Restriction Tribunal had no jurisdiction to entertain RRT Case No. 175 of 2016 nor issue any orders as the rent payable exceeded Kshs. 2,500/=. In **REPUBLIC VS. THE CHAIRMAN RENT RESTRICTION TRIBUNAL & ANOTHER EX PARTE EZEKIEL MACHOGU & 3 OTHERS [2013] eKLR**, Majanja J held that “*the tribunal cannot appropriate jurisdiction to investigate or assess rent where the rent agreed by the land lord and tenant is above the standard rent as defined by the Act*”

Whether this court has the powers to grant orders sought in this application.

22. Order 53 Rule 7 (1) and (2) provides that the High Court can issue an Order of Certiorari to remove any proceedings for the purpose of being quashed. As the tribunal did not have the jurisdiction to entertain the complaint by the 1st and 2nd Respondents, this court has the powers to quash any decision made by the tribunal.

23. For the foregoing reasons, this application is allowed and Orders issued as follows:

a) An Order of Certiorari is hereby issued to remove into the High Court for the purposes of quashing all proceedings and any orders made or alternatively such of the proceedings as relate to the order made on 29th August 2016 in the case pending before the Rent Restriction Tribunal at Mombasa in **RRT Case No. 175 of 2016 between Rama Mazera & Loice Wamuyu Mukumbu vs. Fatma Sufi & 2 others.**

b) Costs to the Applicant.

Dated, Signed and Delivered in Mombasa this 20th day of July, 2017.

E. K. O. OGOLA

JUDGE

In the Presence of:

Mr. Mohamed holding brief Malombo for ex parte Applicant

Mr. Makuto for 3rd Respondent

Mr. Kaunda Court Assistant