



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW NO. 2 OF 2018**

**IN THE MATTER OF AN APPLICATION BY BASHIR MUSSA HAJJI FOR ORDERS OF MANDAMUS PROHIBITION AND CERTIORARI TO COMPEL OR TO PROHIBIT THE BUSINESS PREMISES RENT TRIBUNAL TO CEASE HEARING AND OR DETERMINING THE DISPUTE REGARDING PREMISES KNOWN AS ARABIAN DELIGHT RESTAURANT AND OR TO QUASH THE DECISION BY THE BUSINESS PREMISES RENT TRIBUNAL CONTINUING TO HEAR AND OR DETERMINE THE DISPUTE RELATING TO PREMISES KNOWN AS ARABIAN DELIGHT RESTAURANT, NAROK, BETWEEN BASHIR MUSSA HAJI(LANDLORD AND ABDUL KADER MOHAMED(TENANT)**

**AND**

**IN THE MATTER OF SECTIONS 13,18(C), 19 AND 21 OF THE ENVIRONMENT ANDLAND COURT ACT**

**AND**

**IN THE MATTER OF SECTION 3(2) OF THE LANDLORD AND TENANT (SHOPS, HOTELS AND CATERING, ESTABLISHMENTS) ACT AND IN THE MATTER OF RULE (VIII) OF THE TERMS AND CONDITIONS OF THE SCHEDULE LANDLORD AND TENANT (SHOPS, HOTELS AND CATERING ESTABLISHMENTS) ACT**

**AND**

**IN THE MATTER OF SECTIONS 3 OF THE DISTRESS FOR RENT ACT**

**AND**

**IN THE MATTER OF AN APPLICATION BY BASHIR MUSSA HAJI FOR PREROGATIVE ORDERS AGAINST THE BUSINESS PREMISES RENT TRIBUNAL IN THE MANNER OF HANDLING, HEARING OR DETERMINING THE LANDLORD AND TENANT DISPUTE BETWEEN ABDUL KADER MOHAMMED AND BASHIR MUSSA HAJI**

**AND**

**IN THE MATTER OF BUSINESS PREMISES RENT TRIBUNAL BPRT CASE NO. 113 OF 2017(WRONGLY REFERRED TO BPRT NO. 113 OF 2018)**

**BETWEEN**

**ABDUL KADIR MOHAMED T/A**

**ARABIAN DELIGHTS RESTAURANT.....TENANT**

**VERSUS**

**BASHIR HAJI.....LANDLORD**

**AND**

**IN THE MATTER OF BUSINESS PREMISES TRIBUNAL: BPRT CASE NO. 15 OF 2018**

**BETWEEN**

**ABDUL KADER MOHAMED T/A ARABIAN DELIGHTS RESTAURANT...TENANT**

**VERSUS**

**BASHIR HAJI.....LANDLORD**

**IN THE MATTER OF BUSINESS PREMISES RENT TRIBUNAL HANDLING A MATTER THAT IS RES JUDICATA AND OR HANDLING A DISPUTE IN A BIASED AND PREJUDICIAL MANNER TO THE EXPARTE APPLICANT**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE BUSINESS PREMISES RENT TRIBUNAL.....RESPONDENT**

**EXPARTE**

**BASHIR MUSSA HAJI**

**AND**

**ABDUL KADER MOHAMMED T/A**

**ARABIAN DELIGHTS RESTAURANT...INTENDED INTERESTED PARTY/APPLICANT**

**JUDGEMENT**

The Applicant had by a Chamber Summons dated 20<sup>th</sup> June, 2018 sought for the following orders of mandamus against the respondent compelling the said tribunal from hearing and determining BPRT Case No. 113 of 2017 and a further order of prohibition and the leave so granted do operate as a stay against the decision of the Rent Tribunal. The application was based on the grounds that the tribunal had restrained the applicant from levying distress following the filing of a number of applications before the tribunal being BPRT No. 113 of 2017, BPRT No. 15 of 2018 in which the Applicant clients had restrained the applicant from levying distress and thus the aforesaid acts of the BPRT is in excess of its jurisdiction n that all the orders were contradictory and all the proceedings before the said tribunal have become a circus as the exparte applicant has continued to be prejudiced against the aforesaid decisions of the tribunal as the applicant is sickly and has family financial obligations and consequently the Applicant has invoked the provisions of section 13 of the Environment and Land Court Act 2011 as regard the hearing of disputes including those of rents and hence exercise its statutory supervision of the BPRT. The Application was further supported by the affidavit of Bashir Musa Haji sworn on 20<sup>th</sup> June, 2018 in which the applicant had averred that he leased the premises to the interested party on 19/6/2014 at a month's rent of kshs. 325,000 and a store of a further kshs. 25,000. However, the interested party started to default on the payment of its rents and culminating into the interested party paying kshs. 5,990,000 out of a total of kshs. 16,025,000 making an outstanding balance of kshs. 10,035,000 and when he attempted to levy distress the interested party obtained various orders stopping the levying of Distress. Such order being the one that was issued by the BPRT on 1<sup>st</sup> March, 2018 vide BPRT case No. 15 of 2018 which orders were extended on 8<sup>th</sup> May, 2018 to 4<sup>th</sup> July, 2018 and hence necessitating the instant application.

By a Notice of Motion dated 10<sup>th</sup> September, 2018 the interested party here sought to be enjoined to the judicial Review Application as an interested party stating that he has such extensive interest in the matter that any order which will be granted in his absence will be prejudicial and may cause him immense financial loss and damages and even though the said application for joinder was opposed by the applicant I had by a ruling dated 4<sup>th</sup> July, 2019 allowed the interested party to be enjoined and the interested party had by an affidavit filed on 7<sup>th</sup> August, 2019 denied turning the BPRT into a circus and that the exparte applicant had approached the court with unclean hands as the applicant as the applicant though claiming their being outstanding rents he has refused to collect his rent and has directed his agents not to collect our cheques and his computation of the outstanding rents is unfounded.

I have considered the application before me and the affidavit in support of the application and the submissions made by the counsel for the appellants. I have also considered the interested party's replying affidavit in opposition to the application and the submissions on the same. From the pleadings it is clear that this is a dispute involving a landlord and his tenants on the payment of rents and what is the amount that are outstanding rents and what was paid by the interested party.

From the onset it is not disputed that the issue in dispute are matters that are currently active before the BPRT. It is the exparte application contention that the case filed as turned into a circus to the extent that the interested party has been blocking the applicant from levying Distress for relying and hence the instant application to seek for the instructions of this court.

The applicant has moved the court by way of a Judicial Review to prohibit the BPRT from further hearing and determining the dispute and issue an order of certiorari to quash the decision of the BPRT to hear the dispute and have the same to the ELC for hearing and determination.

Judicial Review as a principal is concerned about the decision making process of a person or a body exercising quasi-judicial power and not with the rights and merits of the decision being challenged. In the instant case the BPRT is a statutory body that exercise quasi-judicial function as established in law, the exparte applicant in the instant case seem to be aggrieved by the decision of the respondent in issuing order issued by it pursuant to filing of cases by the interested party. The BPRT being a body created to do so in my mind issuing order has

not exceeded its jurisdiction and did not act ultra vires of its mandate. The applicant was aggrieved by the decision of the BPRT he ought to have appealed against the decision and not through a Judicial Review. The upshot of the above is that the applicant had invoked the powers of this court wrongly to adjudicate on a matter before the BPRT and I consequently find that the application lacks merit and hence I dismiss it with costs. I further set aside all other orders issued by me stopping the hearing and the determination of the dispute and I advise the parties herein to conclude the matter before the BPRT expeditiously. Orders accordingly.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 26<sup>th</sup> day of October, 2020**

**Mohammed N. Kullow**

**Judge**

**26/10/2020**

in the presence of: -

CA:Maika/Chuma

Mr Masikonde holding brief for Kinyanjui for the interested party

Mr Kilele holding brief for Masese Nyangau for the exparte applicant

Applicant:present

Responden:present

**Mohammed N. Kullow**

**Judge**

**26/10/2020**