



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MOMBASA

JR. NO. 4 OF 2020

JAMES KIRUGI.....APPLICANT

VERSUS

THE CHAIRMAN, RENT RESTRICTION TRIBUNAL 1ST RESPONDENT

DANION LIMITED.....2ND RESPONDENT

JUDGMENT

(Ex Parte applicant seeking orders to quash a decision of the Rent Restriction Tribunal; applicant arguing that the Rent Restriction Tribunal had no jurisdiction because the monthly rent was KShs. 15,000/=; respondents replying that the applicant needed to first exhaust the remedies provided in statute before filing this suit seeking prerogative orders; Rent Restriction Act providing for an internal mechanism of review and appeal; applicant ought to have exhausted those avenues first; no demonstration of what the standard rent is for the premises; standard rent not the equivalent of the actual sum of money and requires calculation; no evidence provided of what the standard rent is thus no demonstration that the Tribunal acted outside jurisdiction; application dismissed)

1. Through an application filed on 28 February 2020, the ex parte applicant sought and was granted leave to commence Judicial Review proceedings for the following orders (slightly paraphrased):-

(a) An order of Prohibition prohibiting the 1st respondent from proceeding in any manner whatsoever in the Rent Restriction Case No. 97 of 2019.

(b) An order of Certiorari to quash the decision of the 1st respondent given on 3 February 2020.

2. The applicant also sought stay of the proceedings in Rent Restriction Case No. 97 of 2019 pending the determination of the substantive motion which stay was duly granted.

3. On 4 March 2020, the ex parte applicant filed the substantive motion seeking the above orders. The case of the ex parte applicant is principally that the 1st respondent had no jurisdiction to hear the dispute that was presented before it.

4. The background is that vide a plaint filed on 19 August 2019 at the Rent Restriction Tribunal, the 2nd respondent, Danion Limited, sued the ex parte applicant, and averred that he is a tenant paying an agreed monthly rent of KShs. 15,000/= per month. He pleaded that he had appointed an agent, Goldwyne Consultants Limited to collect the rent. The 2nd respondent contended that the ex parte applicant had not paid the agreed rent for 6 months and was in arrears amounting to KShs. 85,815/=. It was further averred that the ex parte applicant had issued a cheque which bounced on presentation. He further pleaded that his efforts to levy distress had proved futile as the ex parte applicant is an auctioneer and he was finding it difficult to get an auctioneer who is ready to attach his colleague. The 2nd respondent thus sought orders for payment of the accumulated rent of KShs. 85,815/=; vacant possession; mesne profits; costs and any other remedy that the court deemed fit to grant. The ex parte applicant filed a defence and a preliminary objection. In his defence, he did admit that the rent payable was KShs. 15,000/= but contended that his landlord is Goldwyne Consult Limited. He insisted that he is up to date with his payments and denied having prepared a dishonoured cheque to Goldwyne Consult Limited. In his preliminary objection, he asserted that the Rent Restriction Tribunal had no jurisdiction to hear the matter and further that the identity of the landlord is not known hence the suit was defective ab initio. I do not have before me the proceedings of the Tribunal but there is annexed an order issued on 3 February 2020. That order states as follows :-

(i) That the Defendant's/Tenant's Preliminary Objection dated 10th September 2019 is hereby dismissed for want of prosecution and non attendance.

(ii) That judgment is hereby entered for the Plaintiff/Landlord against the Defendant/Tenant in the sum of KShs. 170,315 as at 31/1/2020.

(iii) That the Defendant/Tenant is to pay the same together with accrued rent and vacate by 29/2/2020.

(iv) That in default, the Plaintiff/Landlord is to apply for execution.

5. It is after this order was issued that this suit was filed.

6. The 1st respondent filed the following Grounds of Opposition :-

1. That the application is misconceived, frivolous, vexatious and an abuse of the process of court.

2. That the Ex Parte applicant has not exhausted all the remedies available to him hence the application flies in the face of Section 9 (2) of the Fair Administrative Actions Act.

3. That the applicant herein has not appealed from and/or applied to set aside the orders complained of.

4. That an assessment of standard rent for the suit premises has not been conducted pursuant to Section 5 (1) (a) of the Rent Restriction Act, Cap 296, Laws of Kenya.

5. That the Rent Restriction Tribunal has jurisdiction over all premises whereof there is no standard rent or whereof the standard rent does not exceed two hundred shilling pursuant to Section 5 (3) of the Rent Restriction Act, Cap 296, Laws of Kenya.

6. That tenant is a protected tenant by virtue of Section 5 (7) of the Rent Restriction Act, Cap 296, Laws of Kenya.

7. That the Rent Restriction Tribunal has the jurisdiction to hear and determine the dispute and issue orders in RRT Case No. 97 of 2019, Danion Limited versus James Kirugi.

7. The 2nd respondent filed Grounds of Opposition as follows :-

(i) The application is misconceived, frivolous, vexatious and an abuse of the process of court.

(ii) The applicant took part and participated in the proceedings and the right recourse was to appeal in the High Court or apply for review before the tribunal and the ex parte applicant has not exhausted all the remedies available to him hence the application flies in the face of Section 9(2) of the Fair Administrative Actions Act.

(iii) Under the provisions of the Rent Restriction Act, Cap 296, Laws of Kenya, the premises for which the applicant is tenant and who is in rent arrears falls within the jurisdiction of the Rent Restriction Tribunal by virtue of Section 5 of the Rent Restriction Act Cap 296 Laws of Kenya.

(iv) The Rent Restriction Tribunal had the jurisdiction to hear and determine the dispute and issue orders in RRT Case No. 97 of 2019, Danion Limited vs James Kirugi.

(v) The Rent Restriction Tribunal has jurisdiction over all premises whereof there is no standard rent or whereof the standard rent does not exceed two hundred shillings pursuant to Section 5 (3) of the Rent Restriction Act, Cap 296, Laws of Kenya.

(vi) An assessment of standard rent for the suit premises has not been conducted pursuant to Section 5 (1) (a) of the Rent Restriction Act, Cap 296, Laws of Kenya.

8. I invited counsel to file written submissions which they did. I have gone through the submissions. In his submissions, Mr. Omwenga, learned counsel for the ex parte applicant, inter alia submitted that the Tribunal, following the provisions of Section 2 of the Rent Restriction Act, cannot hear and determine disputes which have a standard rent exceeding KShs. 2,500/=. He submitted that in this instance, the monthly rent of KShs. 15,000/= was thus beyond the jurisdiction of the Tribunal. He relied on the cases of *Administrator of the Estate of GK Kirima (deceased) vs Chairman Rent Restriction Tribunal Nairobi & Another and Rose Muthoni & Another (interested parties)* ; *Republic vs Chairman Rent Restriction Tribunal & Another ex parte Ezekiel Machogu & 3 Others (2013) eKLR*. Unfortunately these decisions were not annexed.

9. Mr. Mulwa Nduya for the 2nd respondent inter alia submitted that the ex parte applicant has not exhausted all administrative remedies before seeking judicial review. He submitted that the ex parte applicant could have sought a review before the Tribunal or file an appeal to this court. He relied on the case of *Republic Vs Kenya Revenue Authority Commission Ex Parte Keycorp Real Advisory Limited (2019)eKLR*; *Republi vs Rent Restriction Tribunal & 2 Others Ex Parte Evans Nyahoro, Paul Kinuthia Kilundi JR 366 of 2017*. Counsel also referred me to Section 5 (1)(m) of the Rent Restriction Act. He submitted that the applicant has not provided evidence that the standard rent has been assessed thus ousting the jurisdiction of the Tribunal.

10. I have considered the issues herein. The principal complaint of the ex parte applicant is that the Tribunal had no jurisdiction because the rent in issue was KShs. 15,000/=. The respondents have raised two substantive points, firstly, that the ex parte applicant ought to have

exhausted his remedies as provided by the statute, and secondly, that there was no demonstration of what the standard rent was, so that one may conclude that it went beyond the jurisdiction of the Tribunal. I will start with the first point raised as it is almost argued as a preliminary objection.

11. Counsel have referred to Section 5 (1) (m) and Section 8 of the Rent Restriction Act, which is drawn as follows :-

5. Powers of court

(1) The tribunal shall have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in particular shall have power—

(m) at any time, of its own motion, or for good cause shown on an application by any landlord or tenant, to reopen any proceedings in which it has given any decision, determined any question, or made any order, and to revoke, vary or amend such decision, determination or order, other than an order for the recovery of possession of premises or for the ejection of a tenant therefrom which has been executed:

Provided that—

(i) nothing in this paragraph shall prejudice or affect the right of any person under section 8 to appeal from any such decision, determination or order, or from the revocation, variation or amendment of any such decision, determination or order;

(ii) the powers conferred on the tribunal by this paragraph shall not be exercised in respect of any decision, determination or order while an appeal therefrom is pending or in a manner inconsistent with or repugnant to the decision of the appellate tribunal on such an appeal;

8. Appeals

(1) Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.

(2) An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases—

(a) in the case of an order under subsection (5) of section 6; or

(b) on any point of law; or

(c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law, and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact.

(3) Any person who is aggrieved by any decision, determination or order of a person acting under powers delegated to him under subsection (3) of section 5 may apply to the tribunal for a review of that decision, determination or order, and the tribunal may make such order thereon as it thinks fit.

(4) No appeal shall lie from the determination of an appeal given under subsection (2), or an order of the tribunal given under subsection (3), of this section.

For purposes of good administration of justice, it is prudent that parties follow the mechanisms provided in the statute upon which their case is founded, and it would only be in exceptional cases, that a court would entertain a suit that has been filed outside the provided procedure (See for example the decision of Angote J in the case of *Samson Chembe Vuko vs Nelson Kilumo & 4 Others (2014) eKLR*). That is indeed what is provided for in the Fair Administration Act, at Section 9(2) and (3) which provide as follows :-

(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

12. It will be seen that firstly, the Rent Restriction Act at Section 5 (1)(m) does give avenue for a party to ask the Tribunal to reopen the proceedings or seek a variation of the order of court. The ex parte applicant did not pursue that option. Secondly, the ex parte applicant had the option to file an appeal against the decision of the Tribunal as provided in Section 8(2) of the Act. He never did so. The ex parte applicant has not pointed out to me any exceptional circumstances to escape the mechanisms provided in statute. I would thus consider this application as an abuse of the process of court and liable to be struck out. In fact, if the matter had first come before me for the grant of leave, I would most likely have declined to grant leave for this very reason.

13. Be that as it may, I opt to delve into the merits of this suit. The position of the ex parte applicant is that the rent in issue went beyond that which falls within the jurisdiction of the Tribunal. The jurisdiction of the Tribunal is found in Section 2 of the Rent Restriction Act, which

provides as follows :-

2. Application

(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.

(2) Where a dwelling-house is let on a composite tenancy each dwelling-house in the composite tenancy shall be treated for the purposes of this Act as though it were let on a separate tenancy.

14. It will be seen from the above, that the Tribunal would hear disputes where the “standard rent” does not exceed KShs. 2,500/= . “Standard rent” is defined in Section 3 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 outgoings;

(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 outgoings;

(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 outgoings;

(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 outgoings;

(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 outgoings;

(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 outgoings;

15. Now, I need to make clear that “standard rent” as used in the act is not the actual amount of money. Thus when we say “standard rent” of KShs. 2,500/= it does not mean that this literally the sum of KShs. 2,500/=. It will be noted that “standard rent” has to be deduced or calculated. The ex parte applicant can only succeed in this application if he can tell this court what the “standard rent” for the premises is. As I have explained above, rent can be the sum of KShs. 15,000/= in the actual sense, but that does not mean that the “standard rent” is KShs. 15,000/=. The two are not always the same. The ex parte applicant has not presented before this court any material to demonstrate what the standard rent is. From what I can see, the ex parte applicant had filed a preliminary objection contesting the jurisdiction of the court, but he never appeared to argue it. He therefore never demonstrated to the Tribunal that the standard rent is beyond the jurisdiction of the tribunal. It is the same thing here. Though the ex parte applicant is loud in his argument that the Tribunal had no jurisdiction, he has not told me what the standard rent is, so that I can find that the subject matter was beyond the jurisdiction of the Tribunal.

16. If the ex parte applicant had thought that the standard rent went beyond the jurisdiction of the court, he ought to have raised it with the Tribunal, so that the Tribunal can proceed to make an assessment of what the Standard rent is, and then see whether that standard rent is beyond the jurisdiction of the court. He never pursued this avenue.

17. I am afraid that I cannot hold that the Tribunal had no jurisdiction without evidence of what the standard rent is in this case. Given that position, this application must fail.

18. It is hereby dismissed with costs to the respondents. The stay orders issued herein are hereby vacated and the 2nd respondent is at liberty

to execute the judgment of the Rent Restriction Tribunal.

19. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 7 DAY OF OCTOBER 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

IN THE PRESENCE OF:

Mr. Omwanga for the ex-parte applicant

Ms. Nabwana for the 2nd respondent

No Appearance for 1st Respondent

Court Assistant; Wilson Rabongo