

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC JR NO E004 OF 2025

RUTH WANGUI WAWERU.....APPLICANT

VERSUS

THE RENT RESTRICTION TRIBUNAL.....
.....RESPONDENT
ELIZABETH NDUTA NYANJUI.....INTERESTED
PARTY

JUDGMENT

1. This Judgment is in respect of the Applicant’s Notice of Motion application dated 26th June, 2025, seeking the following orders:
 - a. ***THAT this Honourable Court be pleased to grant the Applicant orders of:***
 - I. ***CERTIORARI quashing the Respondent’s order for enforcement of the rent assessment report.***
 - II. ***PROHIBITION, restricting the interested party from enforcing the 1st Respondent’s order.***
 - b. ***THAT the cost of this Application be borne by the Interested Party.***

2. The application is supported by the annexed affidavit of Ruth Wangui Waweru, the Applicant who deponed that on 9th February, 2021, she entered into a written lease agreement with the Interested Party for the lease of land Dundori/Lanet Block 5/936, in Kiamunyi Sub-location, Nakuru County, at a monthly rent of Kshs.6,000/= for a period of eight years.

3. It was her deposition that the interested party filed a complaint before the Rent Restriction Tribunal as Nakuru Case No E215 OF 2024, wherein she filed a preliminary objection challenging the Tribunal's jurisdiction on the ground that the monthly rent under the lease agreement exceeded the pecuniary jurisdictional limit as per Section 2 (1) of the Rent Restriction Act (Cap 296).

4. The Applicant deponed that on 6th May, 2025, the Tribunal ruled that it lacked the jurisdiction to hear and determine the dispute, but despite the Tribunal's ruling, it went further to direct that the new assessed rent to take effect from 1st June, 2025. It was her case that the Tribunal ought to have refrained from making any further directions in the matter.

APPLICANT'S SUBMISSIONS

5. Mr. Andama, counsel for the Applicant filed submissions dated 7th November, 2025, and identified the following issues for determination:
 - a) *Whether the Rent Restriction Tribunal acted without or in excess of jurisdiction?*
 - b) *Whether the Tribunal's decision violated the Applicant's rights under Articles 10, 47 and 50 of the Constitution and the Fair Administrative Action Act, 2015?*
 - c) *Whether the Applicant has met the legal threshold for the grant of orders of certiorari and prohibition?*

6. On the first issue, counsel submitted that the Tribunal made a self-contradictory ruling as it admitted that it lacked jurisdiction, therefore could not purport to alter rent or set an effective date. Counsel relied on Section 2 (1) of the Rent Restriction Act and the cases of **Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989] KLR 1** and **Republic vs Chairman, Rent Restriction Tribunal & Another, Ex parte Nzaro [2023] eKLR**.
7. On the second issue, counsel submitted that the Tribunal being a statutory creature under Cap 296 could not expand its powers by issuing enforcement orders after acknowledging that it lacked jurisdiction. Counsel submitted that the Tribunal’s post-ruling directions violated Article 50 (1) of the Constitution of Kenya which guarantees the right to a fair hearing before an independent and impartial Tribunal established by law.
8. Counsel relied on Article 47 (1) of the Constitution of Kenya, the Fair Administrative Action Act and the cases of **Republic vs Public Procurement Administrative Review Board ex parte Selex Sistemi Integrati [2008] eKLR** and **Samuel Kamau Macharia & Another vs Kenya Commercial Bank & 2 others [2012] eKLR**.
9. On the third issue, counsel urged the court to grant the orders sought as the aim of a judicial review is to arrest an illegality before it materializes. Counsel relied on Article 10 (2) (a) of the Constitution of Kenya and submitted that the applicant does not question the merits of rent

assessment but the legality of the Tribunal's jurisdiction to order and enforce it.

10. Counsel further relied on the cases of **Republic vs Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR** and **Republic vs Rent Restriction Tribunal & Another, Ex parte Mayfair Holdings Ltd [2020] eKLR**, and urged the court to grant the orders as prayed with costs.

ANALYSIS AND DETERMINATION

11. The issue for determination is whether the Applicant is entitled to the orders of *certiorari* and prohibition against the Respondent as sought. In the case of **Republic –vs- National Employment Authority & 3 Others; Exparte Middle East Consultancy Services Ltd (2018) eKLR**, the court held that Judicial Review remedies are discretionary and that a Court must take into account the attendant circumstances in determining whether the orders sought were justified. The court held as follows:

“The discretionary nature of the Judicial Review remedies sought in this application means that even if a Court finds a public body has acted wrongly, it does not have to grant any remedy. Examples of where discretion will be exercised against an Applicant may include where the Applicant’s own conduct has been unmeritorious or unreasonable, for example where the Applicant has unreasonably delayed in applying Judicial Review, where the Applicant has not acted in good faith, or where a remedy would impede the authority’s ability to deliver fair

administration or where the Judge considers that an alternative remedy could have been pursued. The grant of the orders of certiorari, mandamus and prohibition is discretionary. The Court is entitled to take into account the nature of the process against which Judicial Review is sought and satisfy itself that is reasonable basis to justify the orders sought.”

12. The Applicant contends that the Tribunal made a self-contradictory ruling as it admitted that it lacked jurisdiction but purported to alter rent or set an effective date for compliance. In the case of **Owners of the motor vessel “Lillian S” –v- Caltex Kenya Limited (1989) KLR 1** and in particular the decision of the late Nyarangi, J.A. He stated as follows:

“I think 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 has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”

The eminent Judge relied on a text -‘words and phrases legally defined’ - vol. 3 – 1 – N page 113 where he got the following statement.

***“.. where a court takes upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing
Jurisdiction must be acquired before judgment is given”***

13. The Tribunal, after pronouncing itself in its ruling that it lacked the jurisdiction to hear the matter should have downed its tools at that juncture. It should not have gone ahead to alter the rent or set an effective date for compliance. Anything done after it found that it did not have jurisdiction was ultra vires. The Tribunal acted outside its mandate hence null and void.

14. The Supreme Court in **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & 2 Others [2012] eKLR** expressed itself as follows:

“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 itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution

exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

15. Similarly, in the case of **Sammy Likuyi Adiema v Charles Shamwati Shisikani [2013] KEHC 1145 (KLR)**, the court held that a Tribunal may have jurisdiction to hear and determine issues, but it may give orders, which were in excess of its powers. In effect, if a tribunal made orders beyond its powers, that is not necessarily synonymous with the tribunal lacking jurisdiction to entertain the dispute in the first place. In this case, the Tribunal lacked jurisdiction both to hear and determine the dispute and to issue the orders after ruling that it lacked jurisdiction.
16. The upshot is that the Applicant is entitled to the orders sought and I therefore issue the following orders:
 - a) *An order of certiorari is hereby issued quashing the Respondent’s order for enforcement of the rent assessment report.*
 - b) *An order of prohibition is hereby issued restraining the interested party from enforcing the 1st Respondent’s order.*
 - c) *Each party shall bear their own costs.*

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF
DECEMBER 2025.**

M. A. ODENY

JUDGE