

**REPUBLIC OF KENYA**

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

**ELC JR NO. E032 OF 2024**

**REPUBLIC.....APPLICANT**

**GREAT MWANZO PROPERTIES &  
MANAGEMENT VALUERS LIMITED.....EX-PARTE  
APPLICANT**

**VERSUS**

**CHAIRPERSON, RENT RESTRICTION**

**TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT**

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

**AND**

**IRENE NJERI MBOGO.....1<sup>ST</sup> INTERESTED  
PARTY**

**GOLDEN VALLEY LIMITED.....2<sup>ND</sup> INTERESTED  
PARTY**

**JUDGEMENT**

1. What is before the Court for determination is the Ex-parte Applicant's Notice of Motion application dated the 11<sup>th</sup> November 2024 where it seeks the following Orders;

**a) That an Order of Certiorari to bring into this Honourable Court for purposes of being quashed the decision and/or orders of the Honourable Deputy Chairperson, Rent Restriction Tribunal, Hon. J.K Ikingi in Nairobi Rent Restriction Tribunal Case No.E979 of 2022 (Irene Njeri Mbogo v Golden Valley Limited and Great Mwanzo Properties and Valuers Management Limited) on 17<sup>th</sup> October, 2024 to the extent that the 1<sup>st</sup> Interested Party's Counsel do provide the 1<sup>st</sup> Respondent with CR12 belonging to the Ex-parte Applicant (agent) and the 2<sup>nd</sup> Interested party (landlord) for purposes of issuing warrants of arrest against the directors of both the Ex -parte Applicant and the 2<sup>nd</sup> Interested Party.**

**b) That an Order of Prohibition do issue restraining and prohibiting the 1<sup>st</sup> Respondent and all members and officers of the Rent Restriction Tribunal from dealing with and/or undertaking any further proceedings and/or issuing any further orders and /or directions against the directors of the Ex -**

**parte Applicant in the Nairobi Rent Restriction Tribunal No. E979 of 2022 (Irene Njeri Mbogo v Golden Valley Limited and Great Mwanzo Properties and Valuers Management Limited).**

**c) Costs be provided for.**

2. The application is premised on grounds on its face, statement of facts and on the supporting affidavit of Lucy Njambi Njonjo, a director of the Ex parte Applicant. She avers that on 17<sup>th</sup> October 2024, a date scheduled for mention in respect to **BPRT NO. E979 of 2022**, the 1<sup>st</sup> Respondent sought for the names of the directors and copies of the CR12 in respect to the Ex parte Applicant and the 2<sup>nd</sup> Interested Party for purposes of issuing warrants of arrest against them even without according them an opportunity to be heard, which is against the rules of natural justice.
3. She provided a background of the dispute herein being that the 1<sup>st</sup> Interested Party (tenant) filed **Rent Restriction Tribunal BPRT Case No. E979 OF 2022** against the 2<sup>nd</sup> Interested Party as landlord to the premises she was staying

and against the Ex parte Applicant in its capacity as the management agent of the said premises. She sought to compel them to return her household goods allegedly carried away for purposes of levying distress for rent arrears. She contends that subsequently, the 1<sup>st</sup> Respondent gave final orders ex parte directing the Ex parte Applicant and the 2<sup>nd</sup> Interested Party to return the goods allegedly carted away, despite the Ex parte applicant filing a defence and a replying affidavit explaining that by the time of carting away the alleged goods, it had ceased to be the management agent of the 2<sup>nd</sup> Interested Party pursuant to a letter dated 25<sup>th</sup> August 2022.

4. She avers that the 2<sup>nd</sup> Respondent's actions offend the provisions of the Constitution and the Fair Administrative Action Act, since the Ex parte Applicant and the 2<sup>nd</sup> Interested Party were never given an opportunity to be heard and the 1<sup>st</sup> Respondent never issued a notice to show cause against them.

## **Responses**

5. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents vide the replying affidavit of Kipyeko Abel Pchumba, Deputy Chairperson of the 1<sup>st</sup> Respondent. He avers that in her application dated 15<sup>th</sup> September 2023 filed in **BPRT Case No.E979 OF 2022**, the 1<sup>st</sup> Interested Party set out a detailed list of household items removed from her premises including clothing, cooking utensils, beds, beddings and other personal effects and upon consideration and hearing of the application ex parte on 22<sup>nd</sup> February 2023 in the first instance and inter-partes on 24<sup>th</sup> October 2023, the Tribunal issued orders directing the Ex-parte Applicant and the 2<sup>nd</sup> Interested Party herein to return the said goods and made ancillary orders for compliance within specified timelines.
6. He claims that in order to facilitate enforcement of its orders and to enable the Tribunal to issue warrants of arrest in the event of continued disobedience, the Tribunal on 17<sup>th</sup> October 2024 directed the 1<sup>st</sup> Interested Party to furnish copies of Form CR-12 for the Ex-parte Applicant and the 2<sup>nd</sup> Interested

Party herein, to ascertain the names of their directors for purposes of enforcement and that at all times, it acted within its statutory mandate and with the aim of protecting the Plaintiff's rights as a tenant in accordance with Section 29 of the Rent Restriction Act and section 44(1) of the Civil Procedure Act.

7. He also contends that despite there being internal remedies and statutory recourse provided under the Rent Restriction Act, the Ex-parte Applicant has directly come to this Court thereby offending the doctrine of exhaustion.
8. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties did not file their respective responses.
9. The application was canvassed by way of written submissions.

### **Submissions**

10. The Ex parte Applicant submits that it was neither given an opportunity to be heard nor a chance to defend itself and to produce its evidence before the 1<sup>st</sup> Respondent condemned it.

Further, that the 1<sup>st</sup> Respondent's actions are in violation of Article 50(1) of the Constitution, and provisions of the African Commission on Human and People's Rights, which is binding to Kenya as per the provisions of Article 2(5) and (6) of the Constitution. It further submitted that the decision that the 1<sup>st</sup> Respondent made that its CR12 and that of the 2<sup>nd</sup> Interested Party be availed for purposes of issuance of warrants of arrest was illegal and irrational thus it is entitled to an order of Certiorari to quash the same and for Prohibition, which lies not only for excess of jurisdiction or absence of it, but also for a departure from the rules of natural justice.

**11.** To buttress its averments, the Ex parte Applicant relied on the following decision: **Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others Petition No.18 of 2014 as consolidated with Petition No.20 of 2014 [2014] eKLR; Pastoli v Kabale District Local Government Council and others [2008]2 EA 300; Republic v Kenya National Examinations Council Ex**

**parte Gathenji & others Civil Appeal No.266 of 1996; Republic v Kenya Revenue Authority Ex-parte Yaya Towers Limited [2008] eKLR and Republic v Public Procurement Administrative Review Board & Another ex parte Gibb Africa Ltd & another [2012] eKLR.**

**12.** On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submit that the Ex parte Applicant is not entitled to the orders sought since it failed to demonstrate that the 1<sup>st</sup> Respondent acted outside his powers in a manifestly unreasonable manner, or in breach of the minimum requirements of fair procedure. Further that it also failed to demonstrate illegality, irrationality or procedural impropriety and that the allegation of breach of natural justice is unfounded as the Ex parte Applicant has had ample opportunity to be heard in the Tribunal and the impugned direction did not finally determine any rights. They argue that fairness does not always require an oral hearing but what matters is that the person affected has a reasonable opportunity to present their case.

**13.** They also submit that under section 29 of the Rent Restriction Act and section 44(1) of the Civil Procedure Act, basic necessities such as clothing, beds and cooking vessels are exempt from attachment thus the Tribunal was not only entitled but obliged to take steps to protect the tenant and secure compliance with its orders. Further, that directing that CR12's be produced to identify individuals behind a corporate landlord who has repeatedly disobeyed orders is a rational and proportionate enforcement step.

**14.** The Respondents also submit that public interest favours firm protection of tenants of controlled premises, thus interfering with the Tribunal's enforcement mechanisms at this stage would undermine that statutory purpose and clog the judicial system with premature challenges to interlocutory directions. They insist that the instant application violates the doctrine of exhaustion under section 9 of the Fair Administrative Actions Act, given the existence of adequate review and appellate remedies within the statutory scheme.

15. To buttress their averments, the Respondents relied on the following decisions: **Speaker of the National Assembly v Njenga Karume [1992] KECA 42 (KLR)**, **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR**, and **Kenya National Examinations Council v Republic ex parte Gathenji [1997] KECA 58 (KLR)**.

#### **Analysis and Determination**

16. Upon consideration of the instant Notice of Motion application including the statutory statement, verifying affidavit and rivalling submissions, the issue for determination is whether the Ex-parte Applicant has established grounds for grant of orders of Certiorari and Prohibition to quash the 1<sup>st</sup> Respondent's Order issued on the 17<sup>th</sup> October, 2024.

17. The Ex-parte Applicant's case is that the 1<sup>st</sup> Respondent's Orders issued on the 17<sup>th</sup> October 2024 in **Nairobi Rent Restriction Tribunal Case No. E979 of 2022** requiring the

1<sup>st</sup> Interested Party to provide the 1<sup>st</sup> Respondent with its CR12 and that of the 2<sup>nd</sup> Interested party for purposes of issuing warrants of arrest against the directors of both companies are illegal, irrational and a departure from the rules of natural justice.

**18.** On their part, the Respondents contend that directions issued on the 17<sup>th</sup> October 2024 were interlocutory as they did not finally determine the rights of any of the parties. Further, that they were an incidental enforcement step issued in light of the Ex-parte Applicant's long-standing non-compliance with earlier orders and merely prepared the ground for possible enforcement should disobedience persist.

**19.** The Respondents argue that the instant application offends the doctrine of exhaustion since the Ex Parte Applicant ought to have first pursued remedies under the Rent Restriction Act before approaching this Court under Judicial Review.

**20.**I note Section 8 (2) of the Rent Restriction Act guarantees a right of appeal to any party, who is aggrieved and/or dissatisfied with the Ruling and/or decision of the Tribunal.

**21.**Further, Section 9 (2) of the Fair Administrative Actions Act provides that:

**“The High Court or a subordinate court under sub-section (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.”**

**22.**I note the Orders granted on the 17<sup>th</sup> October, 2024, by the 1<sup>st</sup> Respondent were interlocutory. Further, in the said Orders, the 1<sup>st</sup> Respondent had only directed the 1<sup>st</sup> Interested party to avail the respective CR 12 for the Ex parte Applicant and 2<sup>nd</sup> Interested Party to determine directors for purposes of issuing warrants of arrest in case disobedience of the 1<sup>st</sup> Respondent’s orders persist. I further note that there is no indication that both the Ex parte Applicant and 2<sup>nd</sup> Interested Party were denied audience at the time of granting

of the Orders. The Ex parte Applicant has even admitted that it filed its Defence and had an Advocate representing it in the Tribunal.

**23.**Article 50 of the Constitution guarantees a person's right to fair hearing. The Ex parte Applicant seeks an order of Certiorari to quash the 1<sup>st</sup> Respondent's orders of 17<sup>th</sup> October 2024 in **BPRT case No. E979 of 2022** on the basis of the 1<sup>st</sup> Respondent's violation of its right to hearing.

**24.**In **Municipal Council of Mombasa and Umoja Consultants Ltd CA 185/01 (2001) KLR 4816 CAK**, the Court of Appeal observed that:

**“Judicial Review is concerned with the decision making process, not with the merits of the decision itself..”**

**25.**The scope of a Court's jurisdiction while exercising judicial review is described as follows in **Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C. 374, at 401D:**

**“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”**

**26.** On Certiorari, the Court of Appeal stated as follows in **Kenya Pipeline Company Limited vs. Hyosung Ebara Company**

**Limited & 2 Others, CA Civil Appeal 145 of 2011 [2012]**

**eKLR:**

**“ Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (certiorari) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter...”**

**27. While on Prohibition, it was stated as follows in S.T. Adityan and Others v The First Income-Tax Officer, City Circle IV, Madras. 10 (ILR 1964 Madras 700 - 1964 II MLJ 113):**

**"The scope of a writ of prohibition is fairly clear. A writ of prohibition is an instrument of judicial**

control to prevent an excess or abuse of jurisdiction by inferior tribunals. Where a tribunal assumes or threatens to assume a jurisdiction which it does not possess prohibition may issue so long as the proceedings are not complete. Prohibition also lies for a departure from rules of natural justice. If the presiding officer of the inferior tribunal is interested in the lis, or is otherwise biased he can be restrained by prohibition from acting further in the matter. It is, however, well settled that prohibition will not lie to correct an error of law, or a mere irregularity of procedure, or a wrong decision on the merits of proceedings unless there is an excess of jurisdiction. Sometimes scope of writ of prohibition and certiorari, overlap. In one action the applicant may seek to quash an order and restrain an imminent transgression of jurisdiction. But, the scope of prohibition is narrower than that of certiorari. While certiorari may go to correct a manifest error of law on the face of the record even if the tribunal had acted within its jurisdiction, prohibition cannot prevent a threatened irregularity or illegality by the tribunal within its ostensible jurisdiction. "No jurisdictional fault, no prohibition", would not

**merely be a good working rule in the administration of writs, but would be a succinct and correct statement of the nature and function of a writ of prohibition.”**

**28.**In the current scenario, the Ex parte Applicant seek to challenge the administrative action of the vice chairperson of the BPRT issued on the 17<sup>th</sup> October, 2024 where he granted Orders that CR12 for the Applicant and 2<sup>nd</sup> Interested Party to be availed to confirm identity of their directors, which they argue is against the rules of natural justice. The Ex parte Applicant argues that they were not heard. Further, that it stopped being an agent of the 2<sup>nd</sup> Interested Party.

**29.**The 1<sup>st</sup> Respondent insists that he did not act outside his powers in a manifestly unreasonable manner, or in breach of the minimum requirements of fair procedure. He argues that the Ex parte Applicant was granted ample opportunity to be heard in the Tribunal and the impugned direction did not finally determine any rights. The Respondents insist that fairness does not always require an oral hearing but what

matters is that the person affected has a reasonable opportunity to present their case.

**30.** On administrative action, Section 7 of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action. While the Constitution at Article 47 stipulates inter alia:

**‘(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.’**

**31.**In this instance, I note the ex parte Applicant opted to seek for Orders of Certiorari and Prohibition instead of appealing against the decision of the BPRT in the Environment and Land Court in accordance with Section of 8 (2) of the [Rent Restriction Act](#). It is my considered view that the Ex parte Applicant's instant application violates the doctrine of exhaustion as stipulated under section 9 of the Fair Administrative Actions Act, since there are adequate review and appellate remedies available in law. It seems to me that the Ex parte Applicant is seeking to challenge the merits of the impugned Order of 17<sup>th</sup> October, 2024 but I opine that this does not fall within the ambit of judicial review which is concerned with the process of decision making and not the Order itself.

**32.**Based on the facts before me while relying on the legal provisions cited and associating myself with the decisions quoted, it is my considered view that orders of prohibition and certiorari sought cannot issue in vain and since the ex parte Applicant participated in the proceedings before the 1<sup>st</sup>

Respondent and was granted audience, it cannot argue that the rules of natural justice were violated. It is worth noting that the Ex parte Applicant and 2<sup>nd</sup> Interested Party had actually disobeyed Orders granted by the 1<sup>st</sup> Interested Party to return the personal goods of the 1<sup>st</sup> Interested Party, and instead of doing so, rushed to institute the proceedings herein. In the circumstances, I do not find that there was any ‘irrationality’ or ‘unreasonableness’ on the part of the 1<sup>st</sup> Respondent as it acted within its legal mandate. I hence find that the Ex parte Applicant is not entitled to the orders as sought.

**33.** In the foregoing, I find the instant Notice of Motion application unmerited and will proceed to dismiss it with costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT  
NAIROBI THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

Odongo for Respondents

Applicant Absent

Court Assistant: Joan

ORIGINAL