



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. MISC. APPLICATION NO. 10 OF 2018

**TERESIA WAIRIMU KIRIMA (Administrator of the Estate of
G K KIRIMA - Deceased).....EX-PARTE APPLICANT**

=VERSUS=

**THE CHAIRMAN RENT RESTRICTION
TRIBUNAL NAIROBI.....1ST RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL...2ND RESPONDENT

ROSE MUTHONI.....1ST INTERESTED PARTY

RUTH NZOVY.....2ND INTERESTED PARTY

JUDGMENT

1. The *ex parte* applicant, Teresiah Wairimu Kirima, sought and obtained leave to bring a judicial review motion for orders of certiorari and prohibition against the Rent Restriction Tribunal in relation to Nairobi Rent Tribunal Case no 787 of 2017 and Nairobi Rent Restriction Tribunal (RR) (A) No 31 of 2017. She contended that the said cases were tenancy disputes and that under the material tenancy, the agreed contractual rent was Kshs 32,000 per month. She further contended that the Tribunal had caused the monthly standard rent to be assessed and the same had been assessed at Kshs 25,000 per month. She added that, despite the standard rent having been assessed at Kshs 25,000 per month, the Tribunal had failed to down its tools and had continued to exercise jurisdiction over the dispute.

2. Satisfied that the *ex-parte* applicant had presented a *prima facie* case warranting further consideration and that there were exceptional circumstances warranting exemption under Section 9(4) of the Fair Administrative Action Act, this court granted the applicant leave and exemption to bring a substantive motion as sought by her. Consequently, on 6/6/2018, the *ex parte* applicant brought a substantive notice of motion dated 4/6/2018 seeking the following judicial review orders:

a) An order of certiorari do issue to bring into this court and quash the proceedings of Nairobi Rent Tribunal case no 787 of 2018 and Nairobi Rent Tribunal (RR (A) No 31 of 2017 Rose Muthoni v Teresiah Wairimu Kirima (sued as the administrator of the Estate of G K Kirima (Deceased) and another.

b) An order of prohibition does issue restraining the 1st respondent from hearing and or determining Nairobi Rent Tribunal Case no 787 of 2018 and Nairobi Rent Tribunal (RR (A) No 31 of 2017 Rose Muthoni v Teresiah Wairimu Kirima (sued as the administrator of the Estate of G K Kirima (Deceased) and another.

c) Such other orders and reliefs as the honourable Court may deem appropriate in the circumstances.

d) Cost of these proceedings be provided for.

3. The respondents filed grounds of opposition dated 18/4/2018 to the application for leave but after leave was granted, they did not file a response to the substantive motion. In their grounds of opposition dated 18/4/2018, the respondents had contended that the 1st respondent had jurisdiction to hear and determine applications challenging its jurisdiction. They added that the 1st respondent was empowered to order assessment of standard rent and duly discharged its mandate by ordering assessment of standard rent whereupon standard rent was assessed and a report dated 26/7/2017 was filed in the Tribunal. They further contended that the 1st respondent did not order the interested parties to withhold rent.

4. The 1st interested party opposed the application through her replying affidavit sworn on 14/3/2019. She deposed that the assessed standard rent was Kshs 25,000 and not Kshs 25,000.938. She further deposed that under Order 53 rule 1 (2) of the Civil Procedure Rules, an application for orders of certiorari and prohibition should be made within 6 months. She contended that the standard rent having been assessed on 21/6/2017, the *ex-parte* applicant should have brought her application by 21/12/2017, hence the application was time-barred. She further deposed that the *ex-parte* applicant had submitted to the jurisdiction of the Tribunal and the application was therefore an afterthought. She urged the court to reject the application. The 2nd interested party did not respond to the application.

5. The application was canvassed through written and oral submissions. Ms Mogire, counsel for the *ex-parte* applicant, submitted that the tenancy between the *ex-parte* applicant and the 1st interested party was not a controlled tenancy under the Rent Restriction Act, Cap 296 of the Laws of Kenya. She further submitted that upon assessment of the standard rent by the 1st respondent at Ksh 25,000 per month, the 1st respondent should have downed its tools as it had no jurisdiction to entertain the dispute, give directions or determine the matter before it. She contended that in continuing to entertain the dispute, the 1st respondent was acting *ultra vires*, with procedural impropriety and irrationally and the decision to continue hearing the dispute past the assessment stage reeked of illegality. Reliance was placed on the case of **R v the Chairman Rent Restriction Tribunal & 2 Others; Ex-parte Agatha Njoki Mwangi**. Further reliance was placed on the Case of **Ninzons (K) Ltd v China Road & Bridges Corporation (K)**.

6. Mr Terrell who represented the respondents did not file written submissions. In his brief oral submissions, he stated that the Tribunal was bound by the statute which set its pecuniary jurisdiction at a monthly rent of Kshs 2,500.

7. The 1st interested party filed written submissions dated 14/3/2019. She submitted that the instant application was intended to deny her a fair hearing in the Rent Tribunal. She further submitted that the powers of the Tribunal were set out in Section 5 of the Act and the jurisdiction of the Tribunal is pegged on monthly standard rent. She added that the *ex-parte* applicant had submitted to the jurisdiction of the Tribunal.

8. The 1st interested party further submitted that the application offended the provisions of Order 53 rules 1 and 2. Reliance was placed on: (i) **Republic Chairman Rent Restriction Tribunal Mombasa & 2 Others ex-parte Association for the Physically Disabled of Kenya (2018) eKLR**; (ii) **Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Chairman, Rent Restriction Tribunal & 99 Others (2018) eKLR**.

Analysis & Determination

9. I have considered the judicial review motion, the statement of facts and the grounds in support thereof, the response thereto and the parties' respective submissions. I have also considered the legal framework and jurisprudence on the key questions falling for determination in this judicial review application. Three issues fall for determination. The first issue is whether the application is time-barred by dint of the provisions of Order 53 of the Civil Procedure Rules. The second issue is whether the Rent Restriction Tribunal has jurisdiction to entertain the dispute between the 1st interested party on one hand and the *ex-parte* applicant and the 2nd interested party on the other hand after the standard rent has been assessed by the Tribunal at Kshs 25,000. The third issue relates to costs of this motion.

10. There is common ground that in 2015 the rent payable in respect of the suit premises was Kshs 27,000 per month. Subsequently, the monthly rent was increased to Kshs 32,000 effective from 1/5/2017. This prompted the 1st interested party to file a suit in the Tribunal seeking injunctive orders against the *ex-parte* applicant, restraining her against increasing rent and or levying distress against the 1st Interested party. Through its order of 21/6/2017, the Tribunal restrained the *ex-parte* applicant and the 2nd interested party against increasing rent and ordered the 1st interested party to apply for assessment of standard rent of the suit premises within 30 days. The 1st interested party complied by initiating Rent Restriction Assessment Case Number 31 of 2017 and the standard rent was subsequently assessed at Kshs 25,000.938 per month, a figure which the valuation officer rounded to Kshs 25,000 per month.

11. The 1st interested party contends that the *ex-parte* applicant ought to have commenced judicial review proceedings within six months from 26/7/2017 which is the date when the report on standard rent was filed in the Tribunal. Its position is that the judicial review proceedings were filed outside the six months period stipulated under Order 53 of the Civil Procedure Rules. I do not agree with the 1st interested party on this issue. In my view, limitation period for purposes of Order 53 of the Civil Procedure Rules should be reckoned from the date when the impugned decision was made and not from the date when the standard rent report was presented. The impugned decision was the Tribunal's decision to continue entertaining the dispute. From the evidential materials before court, the impugned decision was made by the 1st respondent on 10/10/2017 when it declined to consider its notice of preliminary objection calling upon it to down its tools for want of jurisdiction. The present proceedings were initiated on 26/1/2018 which was within the six month period.

12. Even if one were to reckon the six months period from the date when the report on standard rent was presented, which is 26/7/2017, the six months period would end on 26/1/2018, meaning that these proceedings were initiated on the last day of the six months period.

13. Thirdly, the Civil Procedure Rules came into force before the enactment of the Fair Administrative Action Act. The Rules governed judicial review proceedings in the pre-2010 era. After the Constitution of Kenya 2010 was promulgated, the Fair Administrative Action Act was subsequently enacted by Parliament. The Act is the substantive and procedural law governing judicial review in Kenya. Section 9 of the Act requires that judicial review proceedings be initiated without unreasonable delay. It does not give time restrictions. In my view, therefore, unless it is demonstrated that there has been unreasonable delay, Order 53 of the Civil Procedure Rules cannot be invoked to lock a litigant out of the seat of justice. There is no evidence of unreasonable delay in the present motion. My finding on the first issue therefore is that these proceedings are not time-barred.

14. The second issue is whether the Tribunal has jurisdiction to entertain the rent dispute after the standard rent has been assessed at Kshs 25,000. The Tribunal is created by the statute. Its jurisdiction is pegged on a maximum standard rent of Kshs 2,500/- per month.

15. In paragraph 3 of her affidavit sworn on 14/3/2019 and filed on 15/3/2019, the 1st interested party deposed that standard rent was assessed at Ksh 25,000. Evidence before court reveals that the standard rent was assessed at Kshs 25,000 per month. In my view, what the

Tribunal was required to do was to note down the standard rent and down its tools. It had no jurisdiction to continue entertaining the dispute or to maintain its restraining orders. I say so because the Tribunal's jurisdiction is pegged on the standard rent. Once the standard rent is established and it emerges that the Tribunal has no jurisdiction, it ought to vacate its subsisting orders and down its tools. It has no jurisdiction to entertain the dispute further.

16. In light of the above findings, the *ex-parte* applicant's notice of motion dated 4/6/2018 is allowed in terms of prayers 1 and 2.

17. The present judicial review proceedings were occasioned by the Tribunal. I will in the circumstances not award costs. Parties shall bear their respective costs of this application.

DATED, SIGNED AND READ AT NAIROBI ON THIS 31ST DAY OF JULY 2019.

B M EBOSO

JUDGE

In the presence of:-

Rose Muthoni 1st Interested Party present in person

Court Clerk - June Nafula