



**REPUBLIC OF KENYA**

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

**ELC JUDICIAL REVIEW SUIT NO. 18 OF 2018**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, ARTICLE 22 AND ARTICLE 23(F)**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF THE RENT RESTRICTION ACT, CAP 296**

**AND**

**IN THE MATTER OF THE DECISION AND ORDER MADE *EX PARTE* BY THE DEPUTY CHAIRMAN OF THE RENT RESTRICTION TRIBUNAL**

**IN RESTRICTION TRIBUNAL CASE NO. 310 OF 2018**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE DEPUTY CHAIRMAN,**

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

**O.C.S. BURUBURU POLICE STATION.....2<sup>ND</sup> RESPONDENT**

**TEDDY NDUMU.....1<sup>ST</sup> INTERESTED PARTY**

**MARY NDUMU.....2<sup>ND</sup> INTERESTED PARTY**

**AND**

**BENSON KANUI.....1<sup>ST</sup> *EX PARTE* APPLICANT**

**PIUS NZIOKA.....2<sup>ND</sup> *EX PARTE* APPLICANT**

**JUDGEMENT**

1. What is for determination before this court is the *Ex-Parte* Applicants judicial review application dated 18/04/2018 filed pursuant to leave granted on 21/03/2018. The *Ex-Parte* Applicants seek an order of certiorari to remove into this court and quash the Respondents action, decision and order issued on 05/03/2018 in Rent Restriction Tribunal Case No. 310 of 2018 vide which the Interested Parties sought re-entry into the premises known as Umoja 1 Innercore L.R NO.83/1883, unit No. 1/1. They also seek a prohibition directed at the 1<sup>st</sup> Respondent and Interested Parties, jointly or severally, whether by themselves or persons authorised by them stopping them from continuing with the proceedings filed in Rent Restriction Tribunal Case No. 310 of 2018. Further, the Applicants seek an order to prohibit the 2<sup>nd</sup> Respondent

and Interested Parties from enforcing any of the orders issued by the 1<sup>st</sup> Respondent on 05/03/2018 in Rent Restriction Tribunal Case No. 310 of 2018 together with the costs of the suit.

2. The application is premised on the grounds set out in the statutory statement dated 15/03/2018. The Applicants contend that the decision of the Deputy Chairman of the Rent Restriction Tribunal was *ultra vires* his powers because the pecuniary jurisdiction of the Tribunal is limited to premises where the monthly rent does not exceed Kshs. 2,500/= while the admitted rent for the suit premises was Kshs. 19,000/=. The Applicants also contended the ground that the decision of the Deputy Chairman of the Rent Restriction Tribunal is unconstitutional and offends the rules of natural justice for being orders of a final nature yet they were issued *ex-parte*.

3. The application was also supported by the verifying affidavit of the 2<sup>nd</sup> Interested Party, Pius Nzioka sworn on 15/03/2018 in support of the application for leave. He deponed that on 20/12/2016, the 1<sup>st</sup> Interested Party and the 1<sup>st</sup> *Ex-Parte* Applicant entered into a tenancy agreement for the letting of one rental unit at Umoja Innercore L.R No.83/1883 at a monthly net rent of Kshs. 19,000/= payable on or before the 5<sup>th</sup> day of every month. He annexed a copy of the tenancy agreement dated 20/12/2016. He further deponed that on 30/11/2017, he issued a month's notice of termination of the tenancy agreement dated 20/12/2016 to the Interested Parties and annexed a copy of the termination notice. He further deponed that he subsequently let out the suit premises to another tenant who is currently in occupation of the said premises and attached a copy of the tenancy agreement dated 26/02/2018. He averred that despite the Interested Parties being aware of the notice of termination, they continued to occupy the suit premises and instituted Rent Restriction Tribunal Case No. 310 of 2018, in which the Tribunal granted them orders reinstating them into the suit premises. He produced copies of the pleadings filed before the Tribunal together with a copy of the orders issued on 05/03/2018 by the 1<sup>st</sup> Respondent.

4. The application was opposed by the 2<sup>nd</sup> Interested Party's replying affidavit sworn on 11/05/2018 in which she deponed that the Interested Parties are still tenants in the suit premises because the Applicants have never refunded their deposit and they have continued to demand for and collect rent. She further deponed that the Applicants never served them with a month's notice of termination but that they locked the Interested Parties' rented premises from 03/02/2018, and confiscated all their household goods including passports, certificates and other personal effects which left her and her children in the cold. She deponed that her son was unable to register for his Kenya Certificate of Secondary Examinations exam as his birth certificate was among the items confiscated by the Applicants.

5. She further averred that the Applicants had previously locked her up in the house on 31/01/2018 until the police were alerted and responded by attempting to break into the suit premises. She annexed a copy of the report recorded in the occurrence book to confirm the report she made to the police. She also annexed copies of the orders dated 12/02/2018 and 06/04/2018 addressed to the Applicants requiring them to attend the Chief's office for discussions on the issue of closing the Interested Parties' house without notice. The orders had been served on the police who were in the process of executing them. She stated that at the time the orders complained of were issued, the suit premises had been locked. She contended that the Applicants were beneficiaries of the Tribunal's orders since the Interested Parties were ordered to deposit rent into the bank account which they did. She urged the court to dismiss the application.

6. The 2<sup>nd</sup> *Ex-Parte* Applicant swore a further affidavit on 28/05/2018 urging that the 2<sup>nd</sup> interested Party had no authority to act for the 1<sup>st</sup> Interested Party as the authority signed is initialed while the 1<sup>st</sup> Interested Party's true signature is evidenced in the tenancy agreement filed. He also deponed that the Interested Parties' household goods were moved to a store for safekeeping to pave way for the entry of a new tenant, and that the Interested Party was not eligible for any refund of deposit for reasons that the Applicants had used the money to do repairs on the suit premises.

7. In the supplementary affidavit sworn on 05/06/2018, the 2<sup>nd</sup> Interested Party deponed that the 1<sup>st</sup> Interested Party confirmed that he gave consent and authority to the 2<sup>nd</sup> Interested Party to swear the replying affidavit. She annexed the 1<sup>st</sup> Interested Party's affidavit sworn on 05/06/2018, in which he deponed that he is the 2<sup>nd</sup> Interested Party's son and agent. The 2<sup>nd</sup> Interested Party further deponed that the 2<sup>nd</sup> *Ex-Parte* Applicant confirmed having the Interested Parties' household goods kept in his store and that there was no proof that the goods were picked by the Interested Parties. She also averred that the Applicants did not show proof of repairs done on the suit premises.

8. The 2<sup>nd</sup> Interested Party filed a further supplementary affidavit which she swore on 09/04/2019 on the attempts made to resolve this matter amicably. The Interested Parties decided to go and pick their goods from the *Ex-Parte* Applicants' store on the 16/10/2018 but were shocked to find most of their goods missing and some destroyed. She attached a copy of the inventory of the detained goods. She stated that the Applicants agreed to pay them only Kshs. 97,500/= which was recorded. She attached an inventory of the goods showing those paid for and urged the court to order the *Ex Parte* Applicant to pay the balance. The Respondents did not file responses.

9. Parties filed written submissions which the court has considered. The Applicants contend that the 1<sup>st</sup> Respondent had no jurisdiction to entertain the matter before it since the monthly rent exceeded Kshs. 2500/= which is the pecuniary limit set by Section 2(1)(c) of the Rent Restriction Act. The order being challenged was issued *ex parte* on 05/03/2018 when the matter was fixed for *inter partes* hearing on 10/04/2018. These proceedings were commenced on 15/03/2018. The *Ex Parte* Applicants herein did not attempt to set aside or review those orders.

10. The locus classicus on jurisdiction is the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** where the Court of Appeal held 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. The court downs its tools the moment it holds the opinion that it lacks jurisdiction.

11. In the court's opinion, the issue of jurisdiction should have been raised at the *inter partes* hearing on 10/04/2018 to accord the Tribunal an opportunity to make a finding on the issue. Nevertheless, it is not disputed that the monthly rent payable for the demised premises was Kshs. 19, 000/= which exceeds the pecuniary jurisdiction of the Rent Restriction Tribunal of Kshs. 2500/=. The Tribunal lacked the jurisdiction to issue the orders it made on 5/3/2018.

12. It is an admitted fact that the Interested Parties are no longer in occupation the Applicant's premises. The Interested Parties urged the court to direct the Applicant to pay them the difference between the sum of Kshs. 322,000/= computed on account of their lost or damaged goods and Kshs. 97,500/= which the Applicant paid following discussions held to find an amicable solution of the matter. The Interested Parties ought to file an ordinary claim to recover the value of the goods which they claim were damaged or lost as a result of the Applicant's actions.

13. In the court's view, granting the orders sought in the application dated 18/4/2018 will not serve any useful purpose. The court declines to grant the orders sought in the application dated 18/4/2018. Each party will bear its own costs.

**Dated and delivered at Nairobi this 18<sup>th</sup> day of July 2019.**

**K.BOR**

**JUDGE**

**In the presence of: -**

Mr. Ngatia Wambugu for the *Ex Parte* Applicant

Ms. Fatma Ali for the Respondents

Mr. V. Owuor- Court Assistant

No appearance for the Interested Parties