



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC JUDICIAL REVIEW APPLICATION NO 19 OF 2018

THE REGISTERED TRUSTEES,

KENYA RAILWAYS STAFF

RETIREMENT BENEFITS SCHEME.....APPLICANT

=VERSUS=

THE CHAIRMAN,

RENT RESTRICTION TRIBUNAL.....RESPONDENT

SIMON O. GODIA & 98 OTHERS.....INTERESTED PARTIES

RULING

1. On 20/3/2018, the applicant presented to this court a chamber summons application dated 19/3/2018 seeking leave of this court to apply for an order of certiorari to bring into this court and quash the proceedings and orders given on 10/1/2018 in **Nairobi Rent Restriction Tribunal Case No. 40 of 2018; Simon O Godia & 98 Others v Kenya Railways Staff Retirement Benefit Scheme**.

2. The applicant's case is that Section 2 of the Rent Restriction Act (Cap 296) limits the Tribunal's jurisdiction to tenancy disputes where monthly rent does not exceed Kshs 2,500. The applicant contends that the rent paid by the tenants and the interested parties in Tribunal Case No 40 of 2018 is more than Kshs 2,500 but the Tribunal has ignored this fact and has proceeded to assume jurisdiction over the tenancy disputes. The applicant states that the impugned proceedings and orders are ultravires, issued without jurisdiction, tainted with illegality, null and void *ab initio*.

3. I have carefully considered the application for leave. Judicial review proceedings in Kenya are now regulated by the statutory framework in the Fair Administrative Action Act of 2015. A key hallmark of this legislation is the change it has brought to the character and scope of judicial review jurisdiction in Kenya. The legislation contains a mandatory procedural framework stipulating how judicial review jurisdiction is to be invoked and exercised.

4. Under the Act, “**administrative action**” is defined to include: **(i) the power, functions and duties exercised by authorities or quasi-judicial tribunals; or (ii) any act, omission, or decision of any person, body or authority which affects the legal rights or interests of any person to whom such action relates**. The Rent Tribunal established under the Rent Restriction Act is a quasi-judicial tribunal and its orders and proceedings are therefore subject to the legal framework in the Fair Administrative Action Act.

5. Under Section 9 (2) of the Act, judicial review court is required to refrain from reviewing an administrative action unless the statutory mechanism for appeal or review have been exhausted. Section 9(4) of the Act gives the judicial review court powers, in exceptional circumstances and upon an application by the applicant, to exempt an applicant from the statutory obligation to first exhaust the appeal and review mechanism, if the court considers such exemption to be in the interest of justice. It is to be noted that this discretion is not to be exercised by the judicial review court *suo motto*; it is to be exercised on an application by the applicant. Secondly, to get an exemption order, the applicant is required to satisfy the statutory criteria requiring the applicant to demonstrate “interest of justice” element.

6. I have examined the legal framework in the Rent Restriction Act. Section 5 (1) (m) of the Act provides an internal review mechanism by the Tribunal. It provides thus:

5 (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;

7. Similarly, Section 8(2) of the Rent Restriction Act provides mechanism for appeal to this court in specified cases. It provides as follows:-

8 (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

8. The applicant in this case has neither exhausted the review mechanism in Section 5(1) (m) of the Rent Restriction Act nor moved this court for an exemption order under Section 9(4) of the Fair Administrative Action Act. The net result is that the present application for leave is premature. The chamber summons application dated 19/ 3/2018 seeking leave of this court to bring into this court and quash the proceedings and orders given on 10/1/2018 in **Nairobi Rent Restriction Tribunal Case No. 40 of 2018; Simon O Godia & 98 Others v Kenya Railways Staff Retirement Benefit Scheme** is therefore declined because it does not satisfy the mandatory requirements of Section 9 of the Fair Administrative Action Act.

DATED AND SIGNED AT NAIROBI ON THIS 20TH DAY OF MARCH 2018.

.....

B M EBOSO

JUDGE