



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC APPEAL NO. 291 OF 2017**

**JACKSON KAMAU NDEGWA.....PETITIONER**

**=VERSUS=**

**HALIMA ABDINOOR & ANOTHER...RESPONDENT**

**RULING**

1. This is a ruling in respect of an application for leave to bring an application for judicial review orders. The application had been filed before the Judicial Review Division of the High Court which referred it to the Environment & Land Court on 24<sup>th</sup> April 2017. Before the application for leave could be considered, the applicant filed a Notice of motion dated 16<sup>th</sup> May 2017. The applicant was asked to serve the Notice of Motion dated 16<sup>th</sup> May 2017 for interpartes hearing.

2. When the Notice of Motion dated 16<sup>th</sup> May 2017, came up for interpartes hearing on 24.10.2017, the applicant prayed for leave to amend the Notice of Motion. That leave was granted but when the matter came up for directions on 29<sup>th</sup> November 2017, the applicant made a clarification to court that he had asked to make amendments to the Judicial Review application and not the notice of motion dated 16<sup>th</sup> May 2017. The applicant was then allowed to amend the judicial Review application.

3. The matter was in Court on 29<sup>th</sup> January 2018 when Mr Kithinji through Mr Macharia applied for leave to file a response to the application dated 16<sup>th</sup> May 2017. The matter was adjourned to 6<sup>th</sup> February 2018 when all parties did not appear before the court. The court adjourned the application dated 16<sup>th</sup> May 2017 to 23<sup>rd</sup> May 2018 and directed the court to serve the parties. When the parties herein appeared before me, the applicant insisted on proceeding with the application for judicial review. I took time to peruse the court file and asked the applicant what he intended to do with his application of 16<sup>th</sup> May 2017 now that he was insisting on proceeding with the application for judicial review. He (applicant) then informed the court that he had decided not to proceed with the application of 16<sup>th</sup> May 2017.

4. I have now gone through the applicant's application dated 11<sup>th</sup> September 2017 and filed in court on 30<sup>th</sup> November 2017. The application is an ex-parte application for leave to bring an application for judicial review. After going through the application, I notice that the applicant had filed another application for leave to bring an application for judicial review through J R No. 127 of 2017. The application was struck out for being frivolous. He brought a notice of motion which was also dismissed. This is as per what he has disclosed in this application.

5. The applicant was a tenant of the respondent. There were proceedings before the Rent Restriction Tribunal. The Tribunal issued certain orders, on 18<sup>th</sup> August 2016 and 20<sup>th</sup> April 2017. It is the applicant's contention that the respondent disobeyed those orders. He filed an application for contempt of court which application has not been heard and that the Tribunal has subsequently entertained the respondent who filed proceedings in Rent Restriction case No.54 of 2016 for assessment of rent before she could purge the contempt.

6. The application for contempt is yet to be heard. The applicant seems to be unhappy with the manner in which the Tribunal Chairman is handling the whole issue. The applicant seems to be complaining that the respondent is an imposter who is not a landlady. The applicant also seems to complain about a ruling delivered by the Tribunal on 8<sup>th</sup> September 2016 which he contends was based on invalid pleadings filed by the respondent's advocate.

7. The Tribunal is yet to find the respondent guilty of contempt. That application has to be heard by the Tribunal. If there was any application which was decided based on incompetent pleadings, that is a matter which can be best addressed through appeal and not through judicial review. A party cannot be prevented from filing pleadings in a court or Tribunal with competent jurisdiction. The Court cannot therefore subject separate proceedings which have been commenced by a litigant to judicial review process when no grounds exist for such an action. I therefore find no merit in the applicant's application for leave which is hereby dismissed with no order as to costs.

It is so ordered

**Dated, Signed and delivered at Nairobi on this 31<sup>st</sup> day of May 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :-

Applicant in person

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**