



**REPUBLIC OF KENYA**

**ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC CIVIL SUIT NO 1181 OF 2016**

**IN THE MATTER OF AN APPLICATION BY PETER WAIMIRI MAINA**

**FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND**

**PROHIBITION IN RESEPECT OF THE DECISION AND ORDERS OF THE**

**CHAIRMAN BUSINESS PREMISES RENT TRIBUNAL IN B.P.R.T C.NO 409 OF 2016 ISSUED  
ON 21<sup>ST</sup> DAY OF APRIL 2016 AND ALL THE OTHER SUBSEQUENT ORDERS THERETO**

**AND**

**IN THE MATTER OF THE PROPERTY KNOWN AS PLOT NO CS E36 UMOJA 1 NEW  
MIAMI TAVERN ,NAIROBI**

**AND**

**IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTIONS 7,8, AND 9 OF THE FAIR**

**ADMINISTRATIVE ACT 2015**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORMS ACT, CHAPTER 26 OF  
THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE LANDLORD AND TENANT (SHOPS,HOTELS AND CATERING  
ESTABLISHMENTS) ACT CHAPTER 301**

**LAWS OF KENYA**

**REPUBLIC.....APPLICANT**

=VERSUS=

**THE CHAIRMAN BUSINESS PREMISES RENT**

**TRIBUNAL .....RESPONDENT**

**NEW MIAMI TAVERN LIMITED.....INTERESTED PARTY**

**EX-PARTE PETER WAIMIRI MAINA**

**RULING**

1. This is a Ruling in respect of a Notice of Motion dated 11<sup>th</sup> October 2016. It is an application for judicial review orders of certiorari and prohibition. The ex-parte applicant **Peter Waimiri Maina** is an allottee of Plot **No.CS –E 36 Umoja 1**. The Ex-parte applicant had entered into a lease agreement with Hotel Connections Limited which operated a bar among other businesses on the plot which I shall herein after refer to as “ **the suit premises**”.

2. The lease between the ex-parte applicant and Hotel Connections Limited was to last for a period of 5 years and three months with effect from 1<sup>st</sup> July 2011. The lease period was to expire on or about 30<sup>th</sup> June 2016. Before the lease could expire, the Interested Party **New Miami Tavern Limited** through its Managing Director **Felix Nthenge Kilonzi** entered into an informal arrangement with the ex-parte applicant whereby the ex-parte applicant allowed the interested party to carry on the business which had been operated by Hotel Connections.

3. The ex-parte applicant continued to receive rent from the interested party. Later, a dispute arose between the ex-parte applicant and the interested party which prompted the interested party to file a reference to the Business Premises Rent Tribunal. The interested party obtained injunction orders restraining the ex-parte applicant from interfering with the interested party’s business. The ex-parte orders of injunction were obtained on **21<sup>st</sup> April 2016**. A date for inter-partes hearing was set down for **19<sup>th</sup> April 2016**.

4. The ex-parte applicant filed a replying affidavit to the interested party’s application for injunction and raised a preliminary objection on the ground that the chairman of the Business Premises Rent Tribunal had no jurisdiction to entertain the reference. This preliminary objection was heard and dismissed by the chairman of the tribunal. It is this dismissal which triggered the current application in which ex-parte applicant seeks an order of certiorari to remove the decision of the chairman of the tribunal made on 21<sup>st</sup> April 2016, and all other subsequent orders into this court and have them quashed. The Ex-parte applicant also seeks to quash the proceedings of the tribunal in BPRT case No. 409 of 2016. The applicant also seeks an order of prohibition, prohibiting the chairman of the tribunal from continuing with proceedings in BPRT 409 of 2016.

5. The ex-parte applicant contends that the tribunal chairman had no jurisdiction to entertain the reference by the interested party as there was no tenancy between him and the interested party. That the Chairman of the Tribunal ignored the materials placed before him in arriving at his decision.

6. The ex-parte applicant’s application is opposed by the interested party who contends that the ex-parte applicant’s application was solely brought to circumvent an application for contempt of the tribunal orders facing him. That the ex-parte applicant has been economical with the truth. That the exparte applicant has not told the court that his preliminary objection on jurisdiction was heard and determined and that there was no appeal preferred against it. The interested party further contends that the ex-parte applicant’s application is an abuse of the process of the court which ought to be dismissed.

7. I have carefully gone through the ex-parte applicant's application, the supporting affidavit to it as well as the accompanying statement and the further affidavit. I have also considered the Replying affidavit by the interested party as well as submissions by the counsel for the respective parties.

8. The ex-parte applicant's application seems to centre on the issue of jurisdiction. Though the ex-parte applicant did not want to come out clearly on whether the issue of jurisdiction was dealt with by the chairman of the tribunal, the interested party has deponed through its Managing Director that the issue of jurisdiction was heard and determined and the same was dismissed.

9. This is a judicial review application. In such applications, the court is not concerned about the merits of the decision. The concern of the court is whether the process leading to the decision complained of was arrived at in a fair manner and in accordance with the law. The other concern is whether the agency which rendered the decision had jurisdiction.

10. In the instant case the interested party brought an application for injunction which application was heard ex-parte in the first instant and order of injunction was given on **21<sup>st</sup> April 2016**. The application was set down for inter-partes hearing on **29<sup>th</sup> April 2016**. The ex-parte applicant raised a preliminary objection on grounds of jurisdiction which objection was overruled. The ex-parte applicant seems to complain that the chairmen of the tribunal arrived at this decision based on wrong reasoning. This is not an argument which can be entertained in a judicial review application. It may be a good ground of appeal but not a matter for judicial review. The ex-parte applicant complains in the pleadings herein that the tribunal file was interfered with and that there were certain documents missing effectively locking him out of appeal. With respect to the ex-parte applicant, this is not an issue which can be raised in a judicial review matter. In any case there is nothing placed before the court to confirm the allegation of the ex-parte applicant for the court to appreciate whether what is complained of may have led to a disadvantage on the part of the ex-parte applicant.

11. What instead emerges are sustained efforts by the ex-parte applicant to get the interested party out of the suit premises by all manner of tricks even removing doors from the premises and attempting to remove the roof of the suit premises using hired goons. I have read the affidavit on how the interested party came to have a relationship with the ex-parte applicant. The ex-parte applicant continued to receive rent from the interested party. The ex-parte applicant even concealed the fact that he allowed that arrangement. He cannot therefore turn around and say that he thought that the interested party's managing director was an agent of Hotel Connections Limited and that he did not know that Hotel Connections Limited had relinquished their interest in the suit premises to the interested party.

12. There are decisions some of which have been cited by the counsel for the interested party's advocates to the effect that where a previous tenant leaves the premises and a new one takes over and the landlord goes on to accept rent from the new tenant, he cannot be heard to denounce the new tenant later on. This is what exactly happened here. The ex-parte applicant allowed the interested party to take over the running of the business from the previous tenant that is Hotel Connection Ltd. He continued to receive rent from the interested party who is a body corporate just as was the previous tenant. The issue of jurisdiction does not therefore arise. Hotel connections who were outside the jurisdiction of the tribunal having left and the ex-parte applicant having allowed the interested party to carry on without a lease taking him out of the jurisdiction of the tribunal, he cannot turn round and plead jurisdiction based on the lease of Hotel Connections limited which lease has in any case expired. I therefore do not find any merit in the ex-parte applicant's application which is hereby dismissed with costs to the interested party.

It is so ordered.

**Dated, Signed and Delivered at Nairobi this 29<sup>th</sup> day of March 2017.**

**E.O .OBAGA**

**JUDGE**

At 15.52 pm in the absence of parties who were aware of the date and time for delivery of Ruling.

Court Assistant: Hilda

**E.O .OBAGA**

**JUDGE**