



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT ATNAIROBI

ELC JR. NO. 762 OF 2016

REPUBLIC.....APPLICANT

VERSUS

PETERSON OUMA OLUM1ST RESPONDENT

THE CHAIRMAN RENT RESTRICTION TRIBUNAL2ND RESPONDENT

AND

HAKI TRADERS AUCTIONEERS.....INTERESTED PARTY

MARY WAMBUA.....EX-PARTE APPLICANT

JUDGMENT

What is before me is the Notice of Motion dated 2nd July, 2015, seeking the following orders:

1. An order of certiorari to remove into the High Court and quash the proceedings and ex-parte order made by the 2nd Respondent on 4th June, 2015 in Rent Restriction Case No. 437 of 2015.
2. An order of prohibition to issue prohibiting the 2nd respondent from hearing or continuing to hear and/or make determination of the suit and application in Rent Restriction Case No. 437 of 2015.
3. The costs of the application to be borne by the respondents.

The application which was brought pursuant to the leave that was granted on 22nd June, 2015 was supported by the ex parte applicant’s verifying affidavit sworn on 19th June, 2015 and a statutory statement of the same date. The ex parte applicant’s case is that she is the owner of residential premises situated on L.R. No. 140/292, Embakasi, Nairobi known as Flat

No. 56 (hereinafter referred to as “the suit premises”). On 9th December, 2011, the ex parte applicant (hereinafter referred to as “the applicant”) entered into a tenancy agreement with the 1st respondent under which the applicant let to the 1st respondent the suit premises for a renewable term of 2 years with effect from 31st December, 2013 at an agreed monthly rent of Kshs. 27,500/- per month. Upon the lapse of the said tenancy agreement, the applicant and the 1st respondent entered into a new tenancy agreement for a further term of 2 year period commencing on 1st January, 2014 at an agreed monthly rent of Kshs. 30,000/-.

The 1st respondent delayed in rent payments for the months of February and March, 2015 under the second tenancy agreement. Following that default in rent payment the applicant gave the 1st respondent 30 days notice in writing on 31st March, 2015 to vacate the suit premises. The 1st respondent did not comply with the said notice. He did not also pay the rent that was in arrears. On 25th May, 2015, the applicant instructed the interested party to levy distress for rent against the 1st respondent. On 4th June, 2015, the 1st respondent filed a suit and an application at the Rent Restriction Tribunal (hereinafter referred to as “the 2nd Respondent”) in Rent Restriction Case No. 437 of 2015 against the applicant and the interested party and obtained a temporary order of injunction on the same date restraining them from levying distress for rent, evicting, harassing and/or interfering in any manner with the 1st respondent’s tenancy over the suit premises. It is this tribunal case and order which the applicant has challenged in the present application.

The applicant has contended that the 2nd respondent lacks jurisdiction to hear the suit and the application which were brought before it by the 1st respondent since rent payable for the suit premises under the tenancy agreement between the applicant and the 1st respondent is Kshs. 30,000/-. The applicant has contended that the 2nd respondent’s jurisdiction is limited to premises whose monthly rent does not exceed Kshs 2,500/- . The applicant has contended that the order which was made by the 2nd respondent on 4th June, 2015 restraining the applicant from levying distress for rent or evicting the 1st respondent from the suit premises was made without jurisdiction and ultra vires the provisions of the Rent Restriction Act. The applicant has contended that the said order is a nullity. The applicant has annexed to her application copies of the tenancy agreements she entered into with the 1st respondent, the notice to vacate dated 31st March, 2015, the order dated 4th June, 2015 and pleadings in Rent Restriction Case No. 437 of 2015. The application was not opposed by the respondents.

The application was argued by way of written submissions. The applicant filed her submissions dated 2nd July, 2015 on 6th July, 2015. The applicant submitted that the 2nd respondent is a creature of a statute which has specified its jurisdiction. The applicant submitted that under section 2 of the Rent Restriction Act, Chapter 293 Laws of Kenya, dwelling houses whose monthly rent exceeds Kshs.2,500/- are excluded from the jurisdiction of the 2nd respondent. The applicant submitted that the suit premises attract a monthly rent of Kshs 30,000/- and as such outside the jurisdiction of the 2nd respondent. The applicant has submitted that the 2nd respondent has no jurisdiction to entertain the suit that has been brought before it by the 1st respondent against the applicant and the interested party. The applicant cited two cases in support of her submissions.

The issue for determination by the court is whether the applicant is entitled to the remedies of judicial review sought. I have considered the application together with the verifying affidavit and statutory statement filed in support thereof. I have also considered the submissions by the applicant. In the case of **OJSC Power Machines Limited, Trans Century Limited, and Civicon Limited (Consortium) vs. Public Procurement Administrative Review Board Kenya & 2 others NRB CA 28 of 2016 (2017) eKLR** the Court of Appeal stated as follows:

“The law on the jurisdiction of the High Court to entertain judicial review proceedings are encapsulated in several decisions, some of which were cited before us while the learned Judge applied others in his judgment. The law, from these decisions is to the following effect;

That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceedings. Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision being challenged had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making

the decision, the public body took into account irrelevant matters or did not take into account relevant matters.”

In the case of In the matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011, the Supreme Court stated as follows:-

*“29. Assumption of jurisdiction by courts in Kenya is a subject regulated by the Constitution; by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in **Owners of Motor Vessel ‘Lilian S’ vs. Caltex Oil (Kenya) Limited (1989) KLR 1...***

30. The Lilian ‘S’ case establishes that jurisdiction flows from the law, and the recipient – Court is to apply the same, with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

Section 2 of the Rent Restriction Act, Chapter 293 Laws of Kenya applies the provisions of the Act to all dwelling-houses, other than:

- a) excepted dwelling houses;
- b) dwelling houses let on service tenancies;
- c) dwelling houses which have a standard rent not exceeding two thousand, five hundred shillings (Kshs. 2,500/=) per month, furnished or unfurnished.

It is not disputed that the monthly rent that was agreed upon between the applicant and the 1st respondent for the suit premises was Kshs 30,000/-. The jurisdiction of the 2nd respondent as pointed out above is limited to premises whose standard rent does not exceed Kshs. 2,500/= per month. The 2nd respondent did not have jurisdiction to entertain the suit that was lodged before it by the 1st respondent in respect of the suit premises. The orders that were made by the 2nd respondent on 4th June, 2015 were therefore made without jurisdiction. In the case of Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal No 266 of 1996, the court stated as follows with regard to the orders of certiorari and prohibition as follows:

“...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

I am satisfied that the applicant has made out a case for the orders sought. In the case of Desai -vs- Warsama (1967) E.A.351, it was held that no court can confer jurisdiction upon itself and where a court proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities. It follows therefore that the proceedings and the order that was made by the 2nd respondent on 4th June, 2015 were nullities and liable to be quashed by an order of certiorari. The 2nd respondent cannot also be allowed to proceed with proceedings in excess of its jurisdiction. An order of prohibition shall issue to terminate the proceedings before the 2nd respondent.

In conclusion, I find merit in the application dated 2nd July, 2015. The same is allowed in terms of prayers

