



Republic v Deputy Chairman, Rent Restriction Tribunal; Omondi (Exparte Applicant); Mburu (Interested Party) (Environment and Land Judicial Review Case E010 of 2023) [2024] KEELC 1420 (KLR) (12 March 2024) (Judgment)

Neutral citation: [2024] KEELC 1420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E010 OF 2023
MD MWANGI, J
MARCH 12, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE DEPUTY CHAIRMAN, RENT RESTRICTION TRIBUNAL RESPONDENT

AND

DANCAN ODHIAMBO OMONDI EXPARTE APPLICANT

AND

NAOMI WAMBUI MBURU INTERESTED PARTY

JUDGMENT

Background

1. This judgment is in respect to the Notice of Motion Application by the Ex-parte Applicant herein dated 21st December, 2023, seeking various judicial review orders and filed pursuant to leave granted by this Court on 1st December, 2023. The ex Parte Applicant seeks the following orders:
 - a. That an order of *Certiorari* does issue bringing into this court and quashing the proceedings and subsequent orders issued in Nairobi Rent Restriction Tribunal Case No. 1734 of 2023, Naomi Wambui Mburuv Dancan Odhiambo.
 - b. That an order of Prohibition does issue restraining the Respondent from hearing and or determining Nairobi Rent Restriction Tribunal Case No. 1734 of 2023, Naomi Wambui Mburu v Dancan Odhiambo.



- c. That an order of Prohibition does issue restraining the Interested Party and Officer Commanding Station (OCS) Kabete Police Station from enforcing the orders emanating from Nairobi Rent Restriction Tribunal Case No. 1734 of 2023, Naomi Wambui Mburu v Dancan Odhiambo.
 - d. That this Honourable Court does find that the orders issued by the Rent Restriction Tribunal on 21 November 2023 in Nairobi Rent Restriction Tribunal Case No. 1734 of 2023, Naomi Wambui Mburu v Dancan Odhiambo were issued irregularly and unlawfully for lack of proper jurisdiction.
 - e. That this Honourable Court does make such other orders and reliefs as the Honourable Court may deem appropriate in the circumstances.
 - f. That the costs of these proceedings be provided for.
2. The Application is premised on the grounds on the face of it and the supporting affidavit and the statutory statement dated 28th November, 2023.
 3. In the statutory statement, the Ex-parte Applicant explained in details the grounds upon which he has sought the various reliefs enumerated above.
 4. The Applicant pleaded that he is a Landlord whereas the Interested party is his tenant on the premises known as Apartment No. C802, Urban Oasis paying rent of Kshs 130,000/- per month pursuant to a written tenancy agreement dated 1st January, 2023. On 21st November, 2023, the Interested Party filed a case before the Rent Restriction Tribunal (RRT) being RRT Cause No. E1734/2023. The Cause was filed contemporaneously with an application dated 15th November, 2023 pursuant to which, the Rent Restriction Tribunal issued the following orders:
 - i. That the application is hereby certified as urgent and heard ex parte in the first instance.
 - ii. That the Defendant/Respondent is hereby ordered to restore water and - electricity supply to the suit premises forthwith.
 - iii. That the Defendant/Landlord, his servants, employees and/or agent are hereby restrained from evicting, harassing the Plaintiff/Tenant and/or in any other manner interfering with her tenancy pending the hearing of the application inter partes.
 - iv. That the Plaintiff/Tenant is to pay the outstanding arrears of Kshs. 130,000/= together with accrued monthly rent so as to have cleared within 60 days and thereafter to continue paying rent as usual, in default of which the Defendant/Landlord shall be granted leave to levy distress.
 - v. That the O.C.S. Kabete Police Station do ensure compliance of these orders.
 - vi. That the Plaintiff/Tenant is to take a date for inter partes hearing and serve within 14 days failing which these orders shall stand discharged.
 5. The Applicant asserts that the Tribunal in issuing the above orders violated the provisions of the *Rent Restriction Act*, which under Section 2(1)(c) limits the jurisdiction of the Tribunal to only disputes where the standard rent does not exceed Kshs 2,500/- per month. The Tribunal ignored the fact that there was a valid written tenancy agreement dictating the monthly rent of Kshs 130,000/=.
 6. The Applicant further argued that in granting the Ex-parte orders as indicated above, the Tribunal essentially determined the entire suit before it without affording him a hearing. The Applicant termed



this as unlawful and illegal and a violation of the right to a fair hearing under Section 4 (3) of the *Fair Administrative Action Act*.

7. The Applicant further asserted that the Tribunal by allowing the application as it did, abetted abuse of the process in that the Interested Party had filed a similar suit before the Milimani Chief Magistrate's Court with a Notice of Motion application of similar date seeking the same orders as those sought and granted by the Tribunal. When she failed to obtain interim orders before the Magistrate's Court, the Interested Party moved to the Tribunal without withdrawing the case before the Chief Magistrate's Court.
8. The Interested Party admitted indebtedness before the Tribunal. She was therefore underserving of the orders given since injunctions are equitable remedies and he who goes to equity must go without clean hands. The orders obtained by the Interested Party are extremely prejudicial to the Ex Parte Applicant.
9. The Applicant reiterates that the orders sought herein are merited for the reasons that:
 - A. The Tribunal in entertaining the suit before it exceeded its jurisdiction and issued unlawful and or illegal orders.
 - B. The orders issued by the Tribunal have occasioned the Applicant serious financial and legal harm.
 - C. The unlawful and/or illegal orders issued by the Tribunal have perpetuated a gross abuse of the Court Process and can severely injure the public confidence in the judicial system of this country if not quashed.
10. In spite of being served, the Interested party did not respond to the application herein.

Court's directions

11. The Court's directions were that the Judicial Review application be heard by way of written submissions. The Ex parte Applicant complied and the Court has had the opportunity to read and consider the submissions and the authorities filed.

Issues for determination

12. What is before the Court is an application for judicial review. The scope of Judicial Review was aptly captured by the Court in the *Ugandan Case of Pastolio v Kabale District Local Government Council & others* [2008] 2 EA, where the Court stated as follows:

“In order to succeed in an application for judicial review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.... illegality is when the decision-making authority commits an error of law in the process of taking or making the act the subject of the complaint. Acting without Jurisdiction or *Ultra Vires*, or Contrary to the Provisions of Law or its principles are instances of illegality.
13. While the above stated position is the traditional narrow approach to judicial review, the Supreme Court of Kenya in the case of *Dande & 3 others v Inspector General, National Police Service and 5 others* {Petition 6 [E007/), 4 (E005), and 8 (E010) of 2022 Consolidated} [2023] KESC 40 (KLR) (16 June, 2023) (Judgment), stated that a Judicial Review Court ought to carry out a merit review of a case when a party has approached it under the provisions of the *Constitution*.



14. The Supreme Court stated that:

“It is clear from the above decisions that when a party approaches a Court under the Provisions of the Constitution, then the Court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of Order 53 of the Civil Procedure Rules, and does not claim any violation of the Constitution, then the Court can only limit itself to the process and manner in which the decision Complained of was reached or action taken and following our decision in SGS Kenya Ltd and not the merits of the decision per se.”

15. In that earlier case of SGS Kenya Ltd v Energy Regulation Commission & 2 others, SC Petition No. 2 of 2019 [2020] eKLR, the Supreme Court had stated that:

“The Petitioner approached the High Court by way of the prescribed procedures under Judicial Review, which revolve around the paths followed in decision-making. Such a course, as the appellate Court properly held, is not concerned with the merits of the decision in question. The Law in this regard, which falls under the umbrella of basic Administrative Law, is clear enough, and it is unnecessary to belabor the point. We have, however observed that the appellate Court was right in finding that the high Court should not have gone to the merits of the Review Board decision as if it was an appeal, nor granted the order of mandamus, since the 1st Respondent did not owe any delimited statutory duty to the Petitioner”.

16. The Ex parte Applicant before me approached this Court under the provisions of Order 53 of the Civil Procedure Rules. I will therefore limit myself to the process and manner in which the decision complained of was arrived at without a merit review of the decision by the Rent Restriction Tribunal.

17. The main ground upon which the Applicant bases his application on is that the Rent Restriction Tribunal acted in excess of its jurisdiction. Secondly, the Applicant alleges that the orders issued were issued ex parte denying him the right to be heard, otherwise in violation of the rules of natural justice. The Ex parte Applicant has also pointed out that the Interested Party had filed a parallel case at the Chief Magistrate’s Court at the Milimani Commercial Courts.

18. The issues then for this Court to determine are:

- a. Whether the Applicant has established the grounds for the grant of the judicial review orders.
- b. Whether the Applicant is entitled to the orders sought.
- c. What orders should issue in regard to the costs of these proceedings and the proceedings before the Tribunal.

Determination

19. I have carefully read the submissions by the Ex Parte Applicant on the issue of the jurisdiction of the RRT. It is provided for under the Rent Restriction Act (Cap 296 Laws of Kenya). Section 2(1)(c) provides that:

“This Act shall apply to all dwelling houses which have a Standard rent not exceeding two thousand five hundred shillings per month, furnished or unfurnished.”

20. In this case, and as has been demonstrated by the Ex parte Applicant, the parties had entered into a written tenancy agreement and agreed on monthly rent of Kshs 130,000/=. The Interested Party



does not dispute the rent payable. He expressly informed the Tribunal that the rent payable was Kshs 130,000/= per month and further that she was in rent arrears. I am surprised that the Tribunal assumed jurisdiction in spite of that express admission and went ahead to issue orders.

21. In *R v. Karisa Chengo* [2017] eKLR, the Supreme Court defined jurisdiction in the following words;

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics... where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

22. The jurisdiction of the *Rent Restriction Act* as demonstrated earlier is clearly limited by the Statute that created it; the *Rent Restriction Act*.

23. In *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the Supreme Court held that;

“A Court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

24. In the case of *Johakim Abayo v Mokuu Damaeline Nyambita* [2021] eKLR, the Court correctly pronounced the position regarding the jurisdiction of the RRT where parties have mutually agreed on the rental amounts payable:

“For the umpteenth time, it is emphasized that the first business of the Tribunal in such circumstances is to assess Standard Rent with a view to establishing whether it has jurisdiction or not. Unless and until standard rent is ascertained, the Tribunal has no jurisdiction to entertain or issue orders in a dispute where the agreed or prevailing rent is more than 2,500 per month. It is not lost to this Court that it is with this in mind that Parliament through the Act gave the Tribunal Powers to assess rent on its own motion or upon application whenever it is seized of a dispute. The Tribunal assumes adjudicatory jurisdiction in such circumstances only when it has ascertained that the standard rent falls within the limits set by the statute. It ought to be understood that the *Constitution* has established other relevant adjudicatory bodies where tenancy disputes involving higher monthly rents are to be adjudicated.”

25. Consequently, it is my finding that the Tribunal acted without jurisdiction by purporting to arrogate itself jurisdiction exceeding that which is conferred upon it by the law. The Tribunal had no jurisdiction to hear and entertain the matter.

26. The consequences of a court or tribunal arrogating itself jurisdiction beyond what is given by the law are clear, as spelt out by the Supreme Court in the above cited cases. Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing.



27. Lucie-Smith J in *Said Bin Seif v Shariff Mohammed Shatry* [1940] 19 (1) KLR, had much earlier also eloquently pronounced the consequences in the following words;
- “If a court has no jurisdiction over the subject matter of the litigation, its judgements and orders, however precisely certain and technically correct, are mere nullities, and not only voidable; they're void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the court in which they are rendered, but shall be declared void by every court in which they may be presented. It's well established in law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for lack or defect of jurisdiction.”
28. The decision of the Tribunal therefore is void and must be declared so however precisely certain and technically correct it may be.
29. It has also been brought to the attention of this Court that the Interested Party had filed another suit before the Chief Magistrate's Court at the Milimani Commercial Courts in respect of the same subject matter. She moved to the Tribunal after failing to secure interim injunction orders from the Magistrate's Court without withdrawing the matter.
30. Obviously, the Tribunal was barred by the provisions of Section 6 of the *Civil Procedure Act* from proceeding with the matter which was directly and substantially an issue in the case before the Chief Magistrate's Court between the same parties, litigating under the same title.
31. Consequently, I allow the Notice of Motion by the Ex Parte Applicant with costs against the Interested Party. I further award the Ex-Parte Applicant the costs of the case before the Tribunal.

Conclusion

32. The conclusion is that the Ex parte Applicant's Notice of motion is allowed in the following terms:-
- A. An order of *Certiorari* be and is hereby issued bringing into this court and quashing the proceedings and subsequent orders issued in Nairobi Rent Restriction Tribunal Case No. 1734 of 2023, Naomi Wambui Mburuv Dancan Odhiambo.
 - B. An order of Prohibition be and is hereby issued restraining the Respondent from hearing and or determining Nairobi Rent Restriction Tribunal Case No. 1734 of 2023 Naomi Wambui Mburu v Dancan Odhiambo.
 - C. An order of Prohibition be and is hereby issued restraining the Interested Party and Officer Commanding Station (OCS) Kabete Police Station from enforcing the orders emanating from Nairobi Rent Restriction Tribunal Case No. 1734 of 2023 Naomi Wambui Mburu v Dancan Odhiambo.
 - D. This Honourable Court finds and declares that the orders issued by the Rent Restriction Tribunal on 21 November 2023 in Nairobi Rent Restriction Tribunal Case No. 1734 of 2023 Naomi Wambui Mburu v Dancan Odhiambo were issued irregularly and unlawfully for lack of proper jurisdiction. The said orders are null and void.
 - E. The Ex-Parte Applicant shall have the costs of these proceedings as well as the costs of the case before the Tribunal in Nairobi Rent Restriction Tribunal Case No. 1734 of 2023, Naomi Wambui Mburuv Dancan Odhiambo.

It is so ordered.



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI
THIS 12TH DAY OF MARCH, 2024.**

M. D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ouma holding brief for Mr. Kuria for the Ex Parte Applicant

No Appearance for the Respondent and Interested Party

Court Assistant: Yvette

M . D. MWANGI

JUDGE

