



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MUSINGA, GATEMBU & KANTAI, J.J.A)

CIVIL APPEAL NO. 192 OF 2018

BETWEEN

THE REGISTERED TRUSTEES

KENYA RAILWAYS STAFF RETIREMENT

BENEFITS SCHEME.....APPELLANT

AND

THE CHAIRMAN

RENT RESTRICTION TRIBUNAL.....RESPONDENT

AND

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

(Being an appeal from the Ruling of the Environment & Land Court at Nairobi

(Eboso, J.) delivered on 20th March, 2018 in Nairobi ELC Judicial Review No. 19 of 2018)

JUDGMENT OF THE COURT

1. The appellant, The Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme, is the registered owner of the property known as Land Reference Number 209/12085 on which there is erected residential premises occupied by the interested parties as tenants. On 12th October 2017, the appellant served lease renewal notice on the interested parties. On 10th January 2018, the interested parties instituted suit before the Rent Restriction Tribunal in Nairobi Rent Restriction Cause No. 40 of 2018 seeking, among other reliefs, orders to restrain the appellant from increasing rent, evicting them from the premises, or in any manner interfering with their existing tenancies. Interim restraining orders were issued by the Tribunal against the appellant to that effect on 10th January 2018.
2. Being of the view that the Tribunal had no jurisdiction over the matter, on 20th March 2018, the appellant moved the Environment and Land Court at Nairobi under certificate of urgency in Judicial Review Application No. 19 of 2018 seeking leave to apply for an order of certiorari to quash the proceedings before the tribunal and an order of prohibition to prohibit the tribunal from entertaining the matter.
3. That application was placed before ***Eboso, J.*** who considered it in chambers and without according the appellant an opportunity to prosecute the application concluded, all by himself, that it was premature because the appellant had not exhausted the internal mechanism provided under the Rent Restriction Act. In his impugned ruling dated 20th March 2018 dismissing the application, the learned Judge expressed:

“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.”

4. The appellant has in the present appeal challenged that ruling on the ground that rules of natural justice were violated because the parties were not granted an opportunity to be heard before the Judge reached that decision.

5. Urging the appeal before us, learned counsel for the appellant, **Mr. B. Millimo**, complained that the Judge, on his own motion, raised what is effectively a preliminary objection to the application, canvassed it, and made final orders without a hearing; that in the very least, the Judge ought to have heard the parties and his failure to do so breached the rules of natural justice and the resultant decision is null and void. In that regard, reference was made to the case of **Onyango Oloo vs. Attorney General [1986-1989] EA456**; **Nakumatt Holdings Limited vs. Commissioner of Value Added Tax [2011] eKLR**; and **Pashito Holdings Ltd & another vs. Paul Nderitu Ndungu & others, Civil Appeal No. 138 of 1997 [1997] 1 KLR** for the proposition that the rules of natural justice are minimum standards of fair decision making and it is immaterial if the same decision would have been arrived at even if the rules of natural justice had been heeded.

6. Though served with notice of hearing, there was no appearance for the respondent at the hearing of the appeal.

7. Opposing the appeal **Mr. Elijah Mageto**, learned counsel for the tenants, (who should have been named as respondents in this appeal as opposed to interested parties) submitted that in dismissing the judicial review application, the Judge was exercising a judicial discretion and no basis has been laid for this Court to interfere with the exercise of that discretion. In that regard, counsel cited **Mbogo & another vs. Shah [1968] EA93**; **Julia Moracha Matundura & another vs. Sarah Moraa Moracha & another [2016] eKLR**, among other decisions.

8. We have considered the appeal. It is not in dispute that when the appellant's application for leave to apply for judicial review was placed before the Judge, he determined it based on the material before him without according any of the parties a hearing. That in our view was clearly wrong. The Judge does not appear to have appreciated that he was discharging a judicial function that required observance of the rules of natural justice. As submitted by counsel for the appellant, the Judge framed an issue, which no one had raised, did not invite any views on it, and proceeded to uphold his own objection. That approach, at the risk of repeating, was clearly a violation of the principles of natural justice and the decision by the Judge "*must be declared to be no decision*", to borrow the words of the Court in **Pashito Holdings Ltd & another vs. Paul Nderitu Ndungu & others** (above).

9. As the Court stated in **Onyango Oloo vs. Attorney General** (above):

"The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard."

10. In the same case, the Court, while holding that denial of the right to be heard renders any decision made null and void *ab initio*, pronounced that a decision reached in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. It matters not, therefore, that the Judge may have arrived at the same decision if he had heard the appellant.

11. The upshot of the foregoing is that to the extent that the ruling and orders of the Environment and Land Court given on 20th March 2018 were given without affording the appellant an opportunity to be heard, the same are hereby set aside. The appellant's application dated 19th March 2018 and filed on 20th March 2018 before the Environment and Land Court is hereby reinstated for hearing before any Judge of that court other than **Eboso, J.**

12. Each party shall bear their own costs. Orders accordingly.

Dated and delivered at Nairobi this 25th day of October, 2019.

D.K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR