



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC JUDICIAL REVIEW NO. 46 OF 2018

IN THE MATTER OF: ARTICLE 22 AND 23(f) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ORDERS 53 OF THE CIVIL PROCEDURE RULES (2010)

AND

IN THE MATTER OF: THE RENT RESTRICTION ACT (CAP. 296)

AND

IN THE MATTER OF: RENT RESTRICTION TRIBUNAL CASE NO. 619 OF 2018

AND

IN THE MATTER OF: JOSEPH KAGWATHA SEEKING LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS

AND

IN THE MATTER OF: THE DECISION AND ORDER MADE EX PARTE BY THE DEPUTY

**CHAIRMAN OF THE RENT RESTRICTION TRIBUNAL IN RENT RESTRICTION CASE NO. 619 OF 2018 ON THE 17TH
MAY 2018**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE DEPUTY CHAIRMAN RENT

RESTRICTION TRIBUNAL.....RESPONDENT

AND

BUTRUS JUMA.....INTERESTED PARTY

JOSEPH KAGWATHA.....EX PARTE APPLICANT

JUDGEMENT

1. This is the notice of motion dated 6th August 2018 brought under section 2 (c) of the Rent Restriction Act (Cap 296) Articles 22 and 24 of the Constitution of Kenya 2010, Section 4 of the Fair Administrative Action Act (2015) order 53 (3) of the Civil Procedure Rules and all

other enabling provisions of the law.

2. It seeks orders:-

(1) That an order of certiorari do issue quashing the entire order of the Deputy Chairman of the Rent Restriction Tribunal issued on 17th May 2018.

(2) That an order of prohibition do issue prohibiting the Rent Restriction Tribunal from proceeding in any manner whatsoever with Rent Restriction Tribunal Case No. 619 of 2018.

(3) That costs of this application be awarded to the ex-parte applicant.

3. The grounds are on the face of the application and are:-

(a) That the interested party filed an application dated 15th May 2018 seeking for orders inter alia that the exparte applicant herein, his servants, employees and/or caretakers be ordered to return all the interested party's goods including personal effects in their custody.

(b) That the interested party was granted orders ex parte and the same were issued by the honourable tribunal on 17th May 2018.

(c) That the orders issued are prejudicial since they were issued without full disclosure of material facts.

(d) That in addition, such orders are a nullity on the face of it and should be varied or set aside.

(e) That moreover, the honourable tribunal has no jurisdiction whatsoever to entertain matters where the monthly rent payable exceeds Kshs.2,500/-.

(f) That the interested party paid a monthly rent to tune of Kshs.30,000/- which is beyond the tribunal statutory pecuniary jurisdiction.

(g) That in light of the foregoing, the orders granted without jurisdiction are null and void ab initio.

(h) That the interested party's application had been set down for interpartes hearing on 30th July 2018.

(i) That further, the exparte orders issued by the tribunal on 17th May 2018 are final in nature hence the interpartes hearing on 30th July 2018 will be a mere academic exercise.

(j) That notwithstanding the aforementioned, the interested party is indebted to the exparte applicant a sum of Kshs.40,000 being storage charges.

(k) That additionally, the exparte applicant was never given any opportunity to be heard before the exparte orders were granted contrary to the dictates of fair administration and natural justice.

(l) That unless the said orders are quashed, the ex parte applicant stands to suffer irreparable damages.

4. The application is supported by the affidavit of Joseph Kagwatha, a caretaker of the suit premises sworn on the 6th August 2018.

5. Upon being served with the application, the respondent filed grounds of opposition dated 29th August 2018. The interested party Butrus Juma who was duly served attended court on 26th July 2018. He sought for time to engage an advocate to represent him. The same was granted. On 16th October 2017 when the matter came up for mention he did not appear in court.

6. On the 16th October 2018, the court directed that the notice of motion be canvassed by way of written submissions. The court also gave a mention date of 10th December 2018. By 10th December 2018 only the ex parte applicant had filed his written submissions.

7. It is the exparte's applicants submissions that Section 2(1) of the Rent Restriction Act Cap 296, laws of Kenya provides that:-

“This Act shall apply 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 of exceeding two thousand five hundred shillings per month, furnished or unfurnished”.

8. The Rent Restriction Tribunal does not have jurisdiction to preside over and determine the matter as the monthly rent exceeds Kshs.2,500/- furnished or unfurnished. Although Section 5(1) (a) of the Act empowers the Rent Restriction tribunal to assess the standard rent, the matter herein did not call for assessment of standard rent as the rent was already agreed upon by the landlord and tenant as shown on the Tenancy Agreement marked as annexure 2 on the Exparte Applicant's application. He has put forward the case of **Republic vs Chairman Rent Restriction tribunal & Another Exparte Ezekiel Machogu & 3 others [2013] eKLR**. The tribunal ought to have made a determination on jurisdiction as soon as the issue was brought to its attention.

9. The Exparte Applicant should be granted the orders sought on the application. He has put forward the cases of **Kenya National Examination Council vs Republic Exparte Geoffrey Gathenji Njoroge & Others, Civil Appeal No. 266 of 1996; Republic vs Electricity Commissioners ex-parte London Electricity Joint Committee Co. [1920] 1KB 171 at 2016** as was used with approval in the case of **Republic vs Chairman Rent Restriction Tribunal & 2 Others Ex-parte Agatha Njoki Mwangi [2015] eKLR**.

10. The tribunal had no jurisdiction to determine the interested party's application dated 15th May 2018. The exparte order issued on 17th May 2018 was irregular, fatally defective and bad in law especially because it was granted without hearing the Ex-parte Applicant that led to his arrest and detention at Langata Police Station.

11. I have considered the notice of motion, the grounds of opposition, the written submissions of counsel and the authorities cited. The issues for determination are:-

(i) Whether the Rent Restriction tribunal had jurisdiction to hear and determine Rent Restriction Case No. 619 of 2018 and grant the orders to the interested party on 17th May 2018.

(ii) Whether the expart applicant should be granted the orders sought.

12. It is not in dispute that the interested party was paying a monthly rent of Kshs.25,000 per month. This is clear from the tenancy agreement marked as annexure JK2 to the exparte applicant's supporting affidavit. Section 2(1) of the Rent Restriction Act (Cap 296 Laws of Kenya) is clear that the Act shall apply to dwelling houses which have a standard rent of Kshs.2,500 per month, furnished or unfurnished. It is also clear that the standard rent could not be assessed by the tribunal in the instant case since the rent has already been agreed upon by the landlord and tenant.

13. It is therefore not in doubt that the tribunal lacked jurisdiction to entertain the interested party's application. In the case of **Republic vs Chairman Rent Restriction Tribunal & Another Exparte Ezekiel Machogu & 3 Others [2013] eKLR**. It was held:

"The Rent Restriction Tribunal cannot appropriate jurisdiction to investigate or assess rent where the rent agreed by the landlord and tenant is above the standard rent as defined by the Act."

14. In the case of **Kenya National Examination Council vs Republic Exparte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996** the Court of Appeal stated thus:

".....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....."

The tribunal did not have jurisdiction to entertain the claim by the interested party and therefore the order issued on 17th May 2018 is ultra vires the provision of the Act and it is therefore quashed.

15. In conclusion, I find the notice of motion dated 6th August 2018 merited and is allowed in the following terms:-

(a) That an order of certiorari be and is hereby issued to remove and bring before the honourable court the orders of the Deputy Chairman of the Rent Restriction Tribunal issued on 17th May 2018 and are hereby quashed.

(b) That an order of prohibition is hereby issued prohibiting the Rent Restriction Tribunal from proceeding in any manner whatsoever with Rent Restriction Case No. 619 of 2018.

(c) The costs of these proceedings are awarded to the Exparte Applicant to be borne by the interested party.

It is so ordered.

Dated, signed and delivered in Nairobi on this 9TH day of MAY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for Ex-parte Applicant

.....Advocate for the Interested Party

.....Court Assistant