



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APPLICATION NO. 190 OF 2017

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN RENT RESTRICTION TRIBUNAL.....RESPONDENT

AND

SAMUEL JOEL KIBE.....1ST INTERESTED PARTY

ANTONY MACHARIA.....2ND INTERESTED PARTY

AND

CHARLES MACHARIA MUGO.....EX-PARTE APPLICANT

JUDGMENT

What is before me is a Notice of Motion application dated 24th October, 2017 brought by the ex-parte applicant, Charles Macharia Mugo (hereinafter referred to only as “the applicant”) seeking:

1. An order of certiorari to remove to this Court for the purposes of being quashed the proceedings of Nairobi Rent Restriction Tribunal Case No. 636 of 2016 Samuel Joel Kibe and Antony Macharia vs. Charles Macharia Mugo.
2. An order of prohibition prohibiting the Respondent from hearing and determining Nairobi Rent Restriction Tribunal Case No. 636 of 2016 Samuel Joel Kibe and Antony Macharia vs. Charles Macharia Mugo.
3. An order for costs.
4. Any other relief that this court may consider appropriate and just to grant.

The application is support by a statutory statement dated 10th October, 2017 and a verifying affidavit of the applicant sworn on the same date which were filed together with application for leave. In his statutory statement and verifying affidavit aforesaid, the applicant has contended that he was at all material times a tenant of the 1st interested party, Samuel Joel Kibe in respect of the premises known as Zimmerman Plot No. 22A (hereinafter referred to only as “the suit property”) paying a monthly rent of 16,000/=. The applicant has contended that the 2nd interested party, Antony Macharia has all along been the 1st interested party’s agent for the purposes of managing the suit property and collecting rent from the tenants.

The applicant has contended that since the 2nd interested party was appointed as the 1st interested party’s agent for the purposes of managing the suit property, insecurity within the suit property has increased and the services provided to tenants deteriorated. The applicant has contended that on several occasions, the competence of the 2nd interested party to manage the suit property has been called into question and instead of 2nd interested party addressing the tenants’ complaints, he has resorted to uncouth methods of intimidation and threats to the tenants whom he serves with notices to vacate the suit property.

The applicant has contended that since he was in the forefront in challenging the 2nd interested party’s competency in managing the suit property, the 2nd interested party proceeded to the Rent Restriction Tribunal, the respondent herein (hereinafter referred to only as “the

tribunal”) and filed Rent Restriction Tribunal Case No. 636 of 2016 seeking his eviction from the suit property. The applicant has contended that the said tribunal case was filed solely for the purposes of harassing the applicant and with intention of forcing him to vacate the suit property. The applicant has contended that he entered appearance in the said tribunal case on 17th August, 2016 and filed a notice of preliminary objection challenging the tribunal jurisdiction to hear and determine the dispute between the applicant and the interested parties.

The applicant has contended that despite numerous protests by his advocate before the tribunal, the tribunal refused and/or neglected to hear his notice of preliminary objection and proceeded with the hearing of the main suit in utter disregard of the law. The applicant has contended that on 21st August, 2017 in complete disregard of the applicant’s preliminary objection to its jurisdiction, the tribunal issued orders against the applicant authorising the interested parties to levy distress against the applicant to recover alleged outstanding rent arrears and also to obtain vacant possession.

The applicant has contended that he was not in rent arrears and that the tribunal had no jurisdiction to entertain the dispute that was taken before it by the interested parties. The applicant had contended that his monthly rent was Kshs. 16,000/= and that the tribunal only had jurisdiction to handle disputes over residential premises whose monthly rent was Kshs. 2,500/= and below. The applicant has contended that the proceedings and the orders that were issued by the tribunal aforesaid were illegal and irregular. The applicant has contended that the said orders issued by the tribunal on 21st August, 2017 should not be allowed to stand. The applicant has contended that the tribunal acted contrary to the provisions of section 2(1) (c) of the Rent Restriction Act, Chapter 296 Laws of Kenya which provides that its jurisdiction is limited to dwelling houses whose standard rent does not exceed Kshs. 2,500/= per month.

The applicant has contended that the tribunal’s actions and decision aforesaid were unlawful, unconstitutional, arbitrary, capricious, unreasonable, unfair and against the rules of natural justice. The applicant has urged the court to grant the orders sought in his application with costs.

The applicant’s application is opposed by the interested parties through a notice of preliminary objection dated 27th November, 2017 and a replying affidavit sworn by the 2nd interested party, Anthony Macharia on 27th November, 2017. In their notice of preliminary objection, the interested parties have contended that the applicant’s application is misconceived, premature, bad in law and an abuse of the court process because the standard rent for the suit property has not been assessed and no rent control certificate has been issued in accordance with the provisions of sections 2 and 3 of the Rent Restriction Act, Chapter 296 Laws of Kenya. The interested parties have contended further that the application is premature in that the applicant had not exhausted all the remedies available to him in law before bringing the present application. In his replying affidavit, the 2nd interested party has averred and reiterated that the application is premature, baseless, contained material falsehoods and devoid of merit. The 2nd interested party has admitted that the applicant is a tenant on the suit property and that he was appointed as an agent by the 1st interested party for the purposes of managing the suit property and collecting rent from the tenants.

The 2nd interested party has averred that since his appointment as the 1st interested party’s agent, he has dutifully managed and maintained the suit property and at no time did any tenant raise any formal complaint against him. The 2nd interested party has averred that the applicant’s allegation that he was harassing and intimidating tenants is fabricated, made in bad faith and devoid of any truth. The 2nd interested party has averred that like all tenants on the suit property, the applicant had a duty to pay rent on or before the 5th day of every month and that unlike the other tenants, the applicant has been a serial defaulter in paying rent which has caused serious inconvenience to the interested parties. The 2nd interested party has averred that as a result of the applicant’s persistent default in the payment of rent, he served him with a one-month notice to vacate the suit property on 28th April, 2016 and proceeded to file a suit against him at the Rent Restriction Tribunal (“the tribunal”) seeking orders to compel him to vacate.

The 2nd interested party has contended that the applicant refused to vacate the suit property upon the lapse of the said notice to vacate duly served upon him and in breach of the tenant agreement that he entered into with the 1st interested party. The 2nd interested party has averred that it was after the applicant’s refusal to vacate the suit property that the interested parties proceeded to file a suit at the tribunal namely, Rent Restriction Tribunal Case No. 636 of 2016 (“the tribunal case”) against the applicant seeking vacant possession and recovery of rent arrears due from the applicant.

The 2nd interested party has averred that when the tribunal case came up for hearing on 17th August, 2016, the applicant’s advocate challenged the jurisdiction of the tribunal to hear and determine the matter and the interested parties were given an opportunity to respond. The 2nd interested party has contended that he made submissions at the tribunal that the tribunal had jurisdiction to hear and determine the dispute since the standard rent for the suit property had not been determined. The 2nd interested party has contended that the tribunal considered the issue of its jurisdiction and proceeded to grant leave to the interested parties to levy distress against the applicant and also to obtain vacant possession through orders that were made on 21st August, 2017.

The 2nd interested party has contended that the applicant’s allegation that the tribunal refused to hear his notice of preliminary objection is misleading, false and inaccurate. The 2nd interested party has contended that before the orders of 21st August, 2017 were issued by the tribunal, the applicant was in rent arrears for the months of May, June, July and August, 2017. The 2nd interested party has averred that as at the time the applicant instituted these proceedings, he was still in rent arrears for the months of September, October and November, 2017. The 2nd interested party has averred that the tribunal had jurisdiction to hear the tribunal case and issue the orders that were made on 21st August, 2017. The 2nd interested party has averred that the proceedings before the tribunal and the orders issued therein were legal, valid, regular, just and procedural. The 2nd interested party has contended that the application before the court is premature, baseless an abuse of the court process and has urged the court to dismiss the same with costs.

When the application came up for hearing on 24th October, 2019, Mr. Gioche advocate who appeared for the applicant relied entirely on the statutory statement and verifying affidavit which were filed in support of the application and urged the court to allow the application as prayed. He submitted that the tribunal had no jurisdiction to entertain the dispute that was brought before it by the interested parties since the applicant was paying a monthly rent of Kshs. 16,000/= for the suit property. Mr. Gioche submitted that the tribunal’s jurisdiction was

limited to disputes over dwelling houses whose monthly rent was Kshs. 2,500/= and below. He submitted that in entertaining the dispute between the applicant and the interested parties, the tribunal acted without jurisdiction. He urged the court to quash the orders that were issued by the tribunal.

In his submissions in reply, the 2nd interested party who also appeared for the 1st interested party submitted that since the standard rent for the suit property had not been assessed, the respondent had jurisdiction to hear and determine the dispute that was taken before it by the interested parties. The 2nd interested party admitted that the applicant was paying a monthly rent of Kshs. 16,000/=. He contended however that the said sum of Kshs. 16,000/= was an agreed rent and not the standard rent for the suit property. The 2nd interested party submitted that the tribunal granted to the interested parties orders for vacant possession and that as at the time the said orders were issued, the applicant was in rent arrears to the tune of Kshs. 192,000/=.

I have considered the applicant's application, the statutory statement and the verifying affidavit filed in support thereof. I have also considered the interested parties' notice of preliminary objection and replying affidavit filed in opposition to the application. I am of the view that the following are the main issues arising for determination;

1. Whether the tribunal had jurisdiction to hear and determine the tribunal case and to make the orders complained of by the applicant.
2. Whether the tribunal's orders aforesaid were valid.
3. Whether the applicant is entitled to the reliefs sought against the tribunal.
4. Who is liable for the costs of the application?

The tribunal is established under the Rent Restriction Act, Chapter 296 Laws of Kenya (hereinafter referred to as "the Act"). The jurisdiction of the tribunal is clearly spelt out in the Act. The tribunal cannot exercise or assume powers outside those conferred by the Act. Section 2(1) (c) of the Act provides that the Act shall apply to all dwelling houses other than dwelling houses which have a standard rent exceeding Kshs. 2,500/= per month furnished or unfurnished. Standard rent is defined in Section 3 (1) of the Act as rent at which premises were let on 1st January, 1981 and if as at 1st January, 1981 the premises were not let or not erected or it cannot be determined whether they were let or erected, such rent as may be assessed by the tribunal.

I have perused the pleadings that were filed by the interested parties at the tribunal. The interested parties did not disclose the rent that was being paid by the applicant for the suit property and whether the suit property was let or had been erected as at 1st August, 1981 and if it was let, at what rent it was so let as at that date. I am in agreement with the interested parties that it was the standard rent payable for the suit property that could give the tribunal jurisdiction to entertain the dispute or to reject the same. The applicant took the first opportunity to raise the issue of the tribunal's jurisdiction to entertain the dispute.

I am in agreement with the applicant that once the issue of jurisdiction was raised before the tribunal, the tribunal should have determined its jurisdiction first before giving any order in the matter. The interested parties had contended that the tribunal heard the applicant's objection to its jurisdiction and agreed with the interested parties that it had jurisdiction to entertain the dispute. The interested parties did not place any evidence before the court in support of that contention. A copy of the tribunal's order or decision on the issue of jurisdiction was not placed before the court.

The interested parties put forward a very strong and persuasive argument that rent of Kshs. 16,000/- per month that was being paid by the applicant was an agreed rent and not the standard rent for the suit property. They argued that since the standard rent for the suit property had not been determined, the tribunal had jurisdiction to determine the dispute between the parties as it was not known whether the standard rent for the premises was above Kshs. 2,500/= or below. The interested parties' argument is novel, however, in my view, it is not tenable for a number of reasons. First, if the standard rent for the suit property was not known, the first application that should have been brought by the interested parties to the tribunal was one seeking a determination of the standard rent for the suit property and it was after the tribunal had determined the standard rent for the suit property that it could proceed to hear the interested parties' application for vacant possession and rent arrears or lay down its tool on account of lack of jurisdiction. Secondly, if indeed the standard rent for the suit property was not known or had not been determined as claimed by the interested parties and the interested parties strongly believed that the standard rent for the premises was Kshs. 2,500/= or below, the interested parties had no basis for claiming a monthly rent of Kshs. 16,000/= per month from the applicant. The rent for the premises should have been Kshs. 2,500/= or below per month until determined otherwise by the tribunal. The interested parties' argument that the tribunal had jurisdiction to entertain the case that they filed before it is in the circumstances self-defeating.

In my view, it was incumbent upon the tribunal to determine its jurisdiction before entertaining the dispute. The tribunal had a duty to make enquiries on the standard rent for the suit property. From that enquiry, it would have determined whether the premises had a standard rent or not. If the premises from its enquiry had not been erected or not let as at 1st August 1981 then, the tribunal should have proceeded to assess the standard rent before entertaining the dispute. In entertaining the dispute without first determining whether it had jurisdiction over the same, the tribunal acted irregularly and unreasonably. It was common ground that the applicant was a tenant of the 1st interested party on the suit property and that the applicant was paying a monthly rent of Kshs. 16,000/= to the 1st interested party. It follows therefore that since the applicant was paying a monthly rent of Kshs. 16,000/= per month for the suit property, the premises were prima facie outside the jurisdiction of the tribunal. I am of the view that the standard rent for the suit property had to be taken to be Kshs. 16,000/= which was being paid by the applicant for the suit property unless it was determined otherwise by the tribunal. In the circumstances, in assuming jurisdiction over the premises whose rent was Kshs. 16,000/=: the respondent acted without jurisdiction. It is settled that jurisdiction is everything and without it, a court or tribunal must lay down its tools. Jurisdiction cannot be assumed neither can it conferred by agreement. As was stated in Desai v. Warsama [1967] E.A. 351, no court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities.

Having come to the conclusion that the tribunal had no jurisdiction to entertain the claim that was brought before it by the interested parties, it is my further finding that the proceedings before the tribunal and its orders issued on 21st August, 2017 were all nullities. This court has power under section 13(7) (b) of the Environment and Land Court Act, 2011 to grant the prerogatory orders sought by the applicant. Since the proceedings and the decision of the tribunal were nullities, the same are liable to review by this court.

In conclusion, I find the applicant's Notice of Motion application dated 24th October, 2017 merited. I allow the same in terms of prayers (a) and (b) thereof. The orders granted herein shall however not release the applicant from meeting his obligations as a tenant in the suit property. The 1st interested party is at liberty to institute proceedings against the applicant in a court of competent jurisdiction should that become necessary. Since evidence placed before the court shows that the applicant was in default of his rent payment obligations to the 1st interested party as at the time a suit was brought against him at the tribunal, I will deny applicant the costs of the application. Each party shall bear its own costs.

Dated and Delivered at Nairobi this 7th day of November, 2019

S. OKONG'O

JUDGE

Judgment delivered in open court in the presence of:

Mr. Biketi h/b for Mr. Ruiru for the Applicant

N/A for the Respondent

The 2nd Interested Party present in person

C. Nyokabi-Court Assistant