



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanjiru v Nduta (Tribunal Case E1162 of 2023)  
[2023] KERRT 1179 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KERRT 1179 (KLR)

**REPUBLIC OF KENYA  
IN THE RENT RESTRICTION TRIBUNAL  
TRIBUNAL CASE E1162 OF 2023  
HK KORIR, CHAIR  
DECEMBER 6, 2023**

**BETWEEN**

**MERCY CATHERINE WANJIRU ..... PLAINTIFF**

**AND**

**CAROLINE NDUATA ..... DEFENDANT**

**RULING**

1. By a notice of preliminary objection dated 14<sup>th</sup> August 2023, the defendant opposed the proceeding herein on ground inter alia that the suit offends the provision of Section 2 (1) (c) of [Cap 296](#) given that the monthly rent payable is Kshs. 50,000/= and thus the tribunal has no jurisdiction to handle the matter.
2. On 26<sup>th</sup> October 2023 directions were given for the P.O to be canvassed by way of written submissions. At the time of writing this Ruling only the Defendant had filed her submissions. I shall proceed to consider the same.
3. Learned Counsel filed written submissions dated 2<sup>nd</sup> November 2023 where he reiterated that the tribunal lacks jurisdiction to determine the matter. Counsel relied on the [Black's Law dictionary](#) definition of Jurisdiction which describes it as:

The authority or power to hear and determine judicial disputes or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae.”



4. Additionally, Counsel relied on Section 2(1) (c) of Cap 296 which states that:

The Act applies to all dwelling-houses, other than dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month.”

5. Counsel stated that it is not disputed that the tenant pays rent at Kshs. 50,000/= per month which is above the stipulated ceiling and therefore the tribunal lacks the jurisdiction. Counsel quoted the decision of this Tribunal in RRC No. E102 of 2023, *Rosemary Mugo & Another vs Caroline Nduta & Another*.

6. Counsel further relied on the following authorities to buttress his case:

a. *Owners of the Motor Vessel “Lillian S” Caltex Oil (Kenya) Ltd.* (1989) where Nyarangi, JA (as he then was) stated that;

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

b. *Fazlebussein v Yusufally* (5 A.I.R 1955), where the court held that:

In considering the preliminary issue, the court must look into the averments in the plaint and consider any objections which the defendant may choose to raise against the maintainability of the action on those averments. The question of jurisdiction which is raised by way of a demurer has always to be decided on the allegations made in the plaint and not on the contentions that the defendant may raise. It is true that if the jurisdiction of the Court depends upon the proof of fact and the question as to the existence or otherwise of that fact is canvassed, the parties may lead evidence in support of the respective cases before the preliminary issue as to jurisdiction of the Court is decided”

c. *Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & another* [2019] where Okongo J held that;

“...It follows 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.”

d. *Desai v Warsama* [1967] E.A 351 where the court held that;

...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.”



- e. *Jobakim Abayo v Mokuu Damacline Nyamoita* (2021)eKLR where Hon. B.M Eboso held that:

...the Tribunal has no jurisdiction to entertain or issue orders in a dispute where the agreed or prevailing rent is more than Ksh 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.”

- f. *Republic -vs- Deputy Chairman Rent Restriction Tribunal; Butrus Juma (Interested Party) Ex Parte Joseph Kagwatha* [2019] eKLR, the standard rent of the suit property was Kshs. 25,000/= . In upholding the application and dismissing the suit, the court ruled that:

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 ex-parte 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 been agreed upon by the landlord and tenant. It is therefore not in doubt that the tribunal lacked jurisdiction to entertain the interested party’s application.”

7. Counsel stated that the Tribunal should order the Applicants to pay the Defendants costs of Kshs. 30,000/= as compensation for the trouble and expenses incurred as provided for under Section 33 of The *Rent Restriction Tribunal* which states as follows:

If, on the dismissal of any application, the tribunal is of opinion that the application was frivolous or vexatious, the tribunal may order the applicant to pay to any other party to the application a reasonable sum as compensation for the trouble and expense to which that party may have been put by reason of the application.”

8. Counsel also relied on Section 30 (b) of *Cap 296* which provides that:

In and for the exercise of the powers conferred upon it by this Act, a tribunal shall have the same jurisdiction and powers in civil matters as are conferred upon the High Court, and in particular (but without prejudice to the generality of the foregoing) shall have power-... upon the determination of any application or other proceeding, in its discretion, to order any party thereto to pay the whole or any part of the costs thereof, and either itself to fix the amount of those costs or to direct taxation thereof by the taxing officer of the High Court, either on the High Court scale or on the subordinate court scale.”

9. I have considered the unopposed application. In the absence of any opposition, the only question which falls for determination is whether the Tribunal has jurisdiction to hear and determine the suit.

10. Section 2 of *Cap 296*, gives the tribunal jurisdiction to determine disputes. It states that:-



2. Application

- (1) This Act shall apply to all dwelling-houses, other than—
- a) excepted dwelling-houses;
  - b) dwelling-house let on service tenancies;
  - c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.”

11. It is not disputed that the monthly rent payable is Kshs. 50,000/= therefore the Tribunal lacks Jurisdiction to determine it.

12. The Tribunal is a creature of statute and therefore it can exceed powers granted to it under the statute. As was stated in *Owners of the Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Limited* (supra) in which Nyarangi, JA while citing Words and Phrases Legally Defined – Vol. 3: I-N page 13 held:

By jurisdiction is meant the authority which a court has to decide matters that are before it or take cognisance 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 the 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 cognisance, or as to the area over which the jurisdiction shall extend, or it may partake both of these characteristics.”

13. Accordingly, the P.O is upheld with no orders as to costs.

14. It, therefore, follows that the interim orders earlier granted have to be and are hereby discharged for want of Jurisdiction.

**RULING DELIVERED THIS 6<sup>TH</sup> DAY OF DECEMBER 2023 IN OPEN COURT..**

Certified copies to issue to parties accordingly.

**SIGNED**

**HILLARY K. KORIR**

**CHAIRMAN**

**RENT RESTRICTION TRIBUNAL**

**NAIROBI**

