



**Mwangi v Centrif Limited (Tribunal Case E031 of 2023)
[2023] KEBPRT 1114 (KLR) (27 November 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1114 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E031 OF 2023
P MAY, MEMBER
NOVEMBER 27, 2023**

BETWEEN

JOSEPH MUCHIRI MWANGI TENANT

AND

CENTRIF LIMITED LANDLORD

JUDGMENT

1. The tenant approached the Tribunal by filing the reference dated 27th February, 2023. The tenant stated in the reference that it was compelled to approach the Tribunal to claim damages for the loss they suffered when his goods were damaged. The tenant attributed the loss to the caving in of the structure which was caused by the landlord's failure to maintain the demised premises.
2. It is not in dispute that the parties herein entered into a landlord and tenant relationship. The present dispute as described above arose through the caving in of a section of the demised premises. Again, the same is not disputed. The parties seem to only dispute the cost of the damage suffered. I will therefore summarize the evidence tendered by each party during hearing:

Tenant's case

3. The tenant confirmed that he entered into a lease with the landlord for the demised premises. He stated that on 26/5/2022 swept into the shop and damaged some of his goods. It was the tenant's testimony further that he had raised concerns over the state of the shop and the repairs required but the landlord had failed to act leading to the incident. He prayed that he be compensated and granted costs.
4. The tenant reiterated during cross examination reiterated that the lease agreement imposed a duty upon the landlord of maintaining the demised premises and carrying out repairs where necessary.



Landlord's case

5. The landlord acknowledged that they had entered into a lease with the tenant. The landlord in their testimony stated that the tenant's goods were damaged through a heavy outpour. The landlord also maintained that they had made attempts to have the tenant supply them with additional documents to prove the loss incurred but the said request had not been acceded to thus it had become difficult to assess the amount of compensation to offer.
6. The landlord disputed the figures given by the tenant especially since the assessment was undertaken by the tenant himself. The landlord also stated that the initial complaint was on the amount incurred being Kshs. 90,000/= which the tenant used to revive their business. The landlord disputed that the tenant had failed to discharge their duty in proving the loss incurred.

Analysis

7. It is now settled that the onus of proof lies with the party which asserts a claim on the existence of a certain fact. This has been codified under our Evidence Act under Sections 107 and 108 which provide as follows:

107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

8. In the present proceedings, the burden of proof lay with the tenant to prove the nature of loss suffered and adequately quantify the same. The tenant in discharging this duty, has provided invoices and quotations to prove the same.
9. I have considered the documents adduced by the tenant and the rival pieces of evidence given in rebuttal by the landlord and considered them against the following excerpt of The Halsbury's Laws of England, 4th Edition, Volume 17, at paras 13 and 14 which states as follows:

"The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues."

- (16) The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence



given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence?”

10. The tenant has sought for special damages in the present proceedings amounting to Kshs. 325, 750/-. The common law and statutory position with regards to special damages is that they must be pleaded and proven. It is not enough to throw figures around. A party claiming for special damages has to adduce evidence which is not contested or rebutted by the opposing party.
11. In the case of *Union Bank of Nigeria PLC v Albaji Adams Ayabule & another* [2011] JELR 48225 (SC) (SC 221/2005 (16/2/2011), Mahmud Mohammed, JSC. delivering the judgment of the supreme court of Nigeria stated:

“I must emphasize that the law is firmly established that special damages must be pleaded with distinct particularity and strictly proved and as such a court is not entitled to make an award for special damages based on conjecture or on some fluid and speculative estimate of loss sustained by a plaintiff.... Therefore, as far as the requirement of the law are concerned on the award of special damages, a trial court cannot make its own individual arbitrary assessment of what it conceives the plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.” Further in *Hahn v Singh*, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held: “Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

12. In the present proceedings, the tenant in advancing their claim has only relied on a quotation that he drew it himself. It would have been expected that before or during the course of this trial, the tenant would have engaged an independent professional to assess the loss especially considering that the landlord has contested the cost. This did not happen. As such the Tribunal has to make its decision based on each party’s word against the other.
13. The role of expert evidence in judicial proceedings was discussed by the Court of Appeal in the case of *Mutonyi vs. Republic* [1982] eKLR; where it was held that:

“Expert evidence is evidence given by a person skilled and experienced in some professional or special sphere of knowledge of the conclusions he has reached on the basis of his knowledge, from facts reported to him or discovered by him by tests, measurements and the like...Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts put in evidence.” (Emphasis mine)

14. In view of the foregoing, it is clear that the tenant’s claim for Kshs. 325, 750 is untenable. I would agree with the landlord that the initial complaint was for the sum of Kshs. 91,770 as evinced by the notice of inability to pay rent. The said amount was acknowledged by the landlord in their pleadings and during the hearing. The landlord has not settled the same thus part of the reason that the tenant approached the Tribunal thus the tenant would be entitled to the costs of the reference.
15. In the end the following orders commend itself:



- a. The tenant's reference dated 27/2/2023 is partially allowed to the extent that the landlord is liable to compensate the tenant a total sum of Kshs. 91,770/- being the cost incurred to restore the business.
- b. The tenant is awarded the costs of the references assessed at Kshs. 45,000/-

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF NOVEMBER, 2023.

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of;

Mr. Chege holding brief for Mr. Wambugu for the Tenant/Applicant

Ms. Ondonde for the Respondent

