



**Midway Butchery Limited & 3 others v L.P Holdings Limited (Tribunal  
Case 222 of 2020) [2023] KEBPRT 249 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 249 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 222 OF 2020  
A MUMA, VICE CHAIR  
MAY 12, 2023**

**BETWEEN**

**MIDWAY BUTCHERY LIMITED ..... 1<sup>ST</sup> TENANT  
TRICHEM LIMITED ..... 2<sup>ND</sup> TENANT  
GENERAL PACK LIMITED ..... 3<sup>RD</sup> TENANT  
VALLEY VEGETABLE MARKET LIMITED ..... 4<sup>TH</sup> TENANT  
  
AND  
  
L.P HOLDINGS LIMITED ..... LANDLORD**

**RULING**

**A. Parties And Their Representatives**

1. The Tenants are limited liability companies who rented various shops on LR No 330/396 Valley Arcade off Gitanga Road, Nairobi.
2. The Firm of Okulo & Company Advocates represents the Tenants.
3. The Landlord is a limited liability company and the owner of the suit premises.
4. The Firm of Muri Mwaniki Thige & Kageni LLP Advocates represents the Landlord.

**B. Background Of The Dispute**

5. The Landlord served the tenants with an alteration notice pursuant to Section 4(2) of the [\*Landlord and Tenant \(Shops, Hotels and Catering Establishments\)\*](#).
6. The alterations to the tenancy were meant to increase rent and service charge payable and were to take effect on April 1, 2020.



7. The Tenants filed references dated February 26, 2020 in opposition to the alterations of the terms and conditions of their respective tenancies.
8. On January 13, 2022, Tribunal Case Nos 219, 220, 221 and 222 of 2020 were consolidated with Case No 222 of 2020 being the lead file. Additionally, the Tribunal directed that both the Tenant and the Landlord file valuation reports and that the matter be listed for hearing on March 22, 2022.
9. The matter came up for hearing on March 22, 2022. The Tenants submitted that they had filed a valuation report but had not served it upon the Landlord. The Landlord on the other hand submitted that pursuant to a ruling on Tribunal Cases 860, 861, 864, 865, 925 and 926 of 2018 by Mbichi Mboroki, the valuation report in this case was valid for any new references and that they wished to rely on the same.
10. The Tribunal ordered that the Landlord serve the Tenant with the valuation report in Case No 860-865 of 2018.
11. On January 24, 2023, the Tribunal ordered that parties file their submissions and by consent, parties dispense with physical hearing of valuers.

### **C. Claim And Defence**

12. The Tenant through their valuation report dated January 20, 2020 claim that the suit premises was built in the early 1950's before the advent of the modern shopping malls that have come up in many neighborhoods of Nairobi.
13. It is the Tenant's case that there are modern day shopping malls near the suit premises with modern facilities like escalators, washrooms, finishes and fittings. These facilities attract customers beyond their immediate neighborhoods as opposed to the suit premises. Additionally, the suit premises have defects as some parts of the roof were leaking and required repairs which was more evident in Shop No 6 (Trichem Limited) and Shop No 12 (Valley Vegetables Market Limited).
14. The Tenant further claims that several shops were engaged in similar business which in a way has led to undue competition for customers.
15. The Landlord submits that the increment is based on the fact that the rent and service charge currently payable is substantially below the rent which may be reasonably expected if the premises were to let in the open market at the present time.

### **D. Issue For Determination**

16. The following issue falls for determination;
  - a. Whether the increase of rent is justified.

### **E. Analysis And The Law**

17. Pursuant to Section 4 (2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments), a notice must be issued before any alterations are made to the terms of a tenancy.
18. In this case, the Landlord issued a notice to vary the rent and service charge payable for all tenants. As such, the alteration notice is valid.



19. The Tenants however challenged the notice in opposition to the increment of rent and service charge before this Tribunal on the basis that it is exorbitant and does not reflect the current value of rent payable in the open market.
20. Pursuant to Section 12 of the of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\)](#), the Tribunal has power to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereto.
21. However, the Act does not define what amounts to “all circumstances” and neither does it provide a formula for arriving at the rent at which the premises may be let in the open market. The Tribunal therefore exercises a discretion over these matters and this discretion must be exercised judicially having regard to the evidence before the Tribunal as was held in the case of Nairobi High Court Civil Appeal No 61A of 1976 [Shah & Shah Vs Francis Titus Kigundu](#).
22. In the case of [Margaret Wanjugu Nduma & 3 Others Vs James Gichuki Gathara](#) (2020) eKLR. The court while dealing with the applicable principles governing assessment of rent held that;
- On the first issue for determination as to whether the chairperson properly applied the principles governing assessment of rent, the principles governing the assessment of rent are found in form G of the regulations as follows;
- i. Ascertaining the original, cost of construction of the building.
  - ii. The age of the building.
  - iii. The market value of the land on which the premises are built.
  - iv. The improvement and cost of such improvements.
  - v. Amenities or services provided for by the Landlord.
  - vi. The rent at which the premises were let for the past three years.”
23. At the time of filing the present suit before the Tribunal, the Tenants were paying rent at the rate of Kshs 171.00 and service charge at the rate of Kshs 35 as follows;
- a. Valley Vegetable Market – Kshs 171,877.00 as rent and Kshs 38,633.00 as service charge.
  - b. Trichem Limited – Kshs 182,966.00 as rent and Kshs 41,184.00 as service charge.
  - c. General pack Limited – Kshs 168,181.00 as rent and Kshs 37,856.00 as service charge.
  - d. Midway Butchery Limited- Kshs 182, 539.00 as rent and Kshs 41,088.00 as service charge.
24. Relying on the valuation reports filed by the parties, the Landlord’s seeks to increase the rent to a rate of Kshs 330 and service charge at a rate of Kshs 33. However, I find that the Landlord’s report prepared in August 2018, although valid, does not reflect the true market value of the premises for the reason that so much time has passed.
25. On the other hand, the report filed by the Tenants shows a comparison of rent and service charge payable with six properties within Lavington, Adams Arcade (Kilimani) and Hurlingham. The findings are that the average rent payable per square foot is Kshs 177.00 while the service charge payable is Kshs 33.00.



26. Taking into account the above-mentioned principles of rent assessment vis a vis both valuation reports, it is my finding that having been built in 1950, the suit premises are fairly old. It is not clear whether any improvements have been undertaken so far.
27. However, I note that service charges are based on the cost of providing services to the Tenants. This cost can only be ascertained by the Landlord. According to the Landlord's valuation report, the rate of the Service charge payable is Ksh 35. I find this rate to be reasonable.

#### **F. Orders**

28. The upshot is that the Tenants' references dated February 26, 2020 are upheld in the following terms;
29. Tenants shall pay rent and service charge at the rate highlighted below from the month of June 2023 as and when it falls due more specifically as provided for in the Tenants Valuation for Rent and Landlords Valuation for Service Charge purposes;
- a. Valley Vegetable Market – Kshs 223,627.00 as rent and Kshs 42,315.00 as service charge.
  - b. Trichem Limited – Kshs 244,150.00 as rent and Kshs 45,045.00 as service charge.
  - c. General pack Limited – Kshs 206,037 .00 as rent and Kshs 41,405 as service charge.
  - d. Midway Butchery Limited- Kshs 182, 539.00 as rent and Kshs 44,940.00 as service charge.
  - e. Each party shall bear their own cost.

**HON. A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling dated, signed and delivered by Hon. Muma this 12<sup>th</sup> day of May 2023**

in the Presence of Kariuki for the Landlord and Murungi for the Tenants though muted.

**HON. A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

