



Audio Corner Limited v Thande Holdings & another (Tribunal Case E034 of 2023) [2024] KEBPRT 534 (KLR) (22 March 2024) (Judgment)

Neutral citation: [2024] KEBPRT 534 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E034 OF 2023
GAKUHI CHEGE, CHAIR
MARCH 22, 2024**

BETWEEN

AUDIO CORNER LIMITED TENANT

AND

THANDE HOLDINGS 1ST RESPONDENT

AP THANDE 2ND RESPONDENT

JUDGMENT

1. The Landlord herein issued a notice to alter terms of tenancy upon the tenant seeking to increase rent from Kshs.34,922.00 to Kshs.68,782 with effect from 1st February, 2023. The tenancy notice is dated 21st November 2022.
2. Being opposed to the notice, the tenant filed the instant reference dated 11th January 2023 against the increment pursuant to Section 6(1) of Cap. 301, Laws of Kenya.
3. On 7th June 2023, parties were directed to comply with Order 11 of the Civil Procedure Rules pursuant to which the landlord filed a witness statement dated 21st June 2023 and a list of documents of even date containing 5 documents as follows:-
 - a. Landlord's notice for increment of rent dated 21st November 2022.
 - b. Valuation report dated 9th June 2022.
 - c. Company resolution dated 6th September 2022.
 - d. Rent reconciliation statement and
 - e. Rent invoices.



4. On 15th August 2023, the parties agreed that the matter proceeds to judgment on the basis of documents filed in court. Leave was given to the tenant to file valuation report and any other documents in the matter.
5. The tenant filed a valuation report by Premier Valuers Limited dated 12th October 2023 in respect of the business premises on L.R No. 209/2421, Judith Wamitha Thande Memorial House Luthuli Avenue, Nairobi City which returned a monthly rent of Kshs.36,350/-. The business premises is on ground floor and measures 134.07 square feet at Kshs.271.10.
6. The tenant's valuation report captures 4 comparables as follows:-
 - i. L.R No.209/697/36 Luthuli Avenue Nairobi City Centre whose tenant is Samsung/LG Radio House occupying the ground floor shop measuring 20.49 square metres paying Kshs.46,000/- rent per month exclusive. This translates into Kshs.208.52 per square feet or Kshs2,245.00 per square metre per month exclusive.
 - ii. L.R NO. 209/2413, Munyu Road, Nairobi City Centre whose tenant is Abdilahi Electronics with a lettable area of 135.00 square feet or 12.63 square metres paying a monthly rent of Kshs.41,000/- per month exclusive. This translates to Kshs.301-47 per square feet or Kshs.3246.24 per square metre per month exclusive.
 - iii. L.R No.209/2432, Luthuli Avenue, Nairobi City Centre, Agakhan Complex which is about 250 metres from the suit premises whose tenant is Micky Electronics. It measures 165.00 square feet or 15.33 square metres with a monthly rent of Kshs.44,000/- per month exclusive which translates into Kshs.266.70 per square feet or Kshs.2,870.19 per square metre per month exclusive.
 - iv. L.R NO. 209/2408, Luthuli Avenue, Nairobi City Centre located at the intersection of Luthuli Avenue and Tom Mboya Street on ground floor of Hotel Salama, 300 metres from the suit premises whose tenant is Parker Radio House. It measures 156.00 square feet or 14.49 square metres paying a monthly rent of Kshs.48,000.00 per month exclusive which translates into 307.70 per square feet or 3312.63 per square metre per month exclusive.
7. On the other hand, the landlord filed a valuation report by Pinnacle Valuers Limited dated 9th June 2022 which returned a monthly rent of Kshs.79,787.21 for the suit premises inclusive of VAT. The monthly rent exclusive of VAT is Kshs.68,782.08.
8. The Report has 3 comparables taken from the building housing the suit premises as follows:-
 - i. Shop No. GF6- sound skills Limited on ground floor with an approximate area of 144.67 square feet with the rent payable being Kshs.82-125 per square feet.
 - ii. Shop No. 5A- Super Deal on ground floor with an approximate area of 186.05 square feet with the rent payable being Kshs.110,995.00 (inclusive of VAT) translating into Kshs.596.587 per square feet.
 - iii. Shop No. 5B- Jowanga Electronics on Ground floor with an approximate area of 187.30 square feet and a rent of Kshs.123,795.00 inclusive of VAT which translates to Kshs.660.995 per square feet. The lease was renewed in March 2022.
9. The Landlord's valuation report has 5 other comparables taken from nearby premises as follows:-



- a. Ashwhite Shopping Complex on Munyu Road, off Luthuli Avenue, Ground floor shops with approximately 136.92 square feet with prevailing rental rates of Kshs.52,000/- (inclusive of VAT) This translates to Kshs.928.571. This translates to Kshs.379.784 per square feet.
 - b. Dama House, Luthuli Avenue ground floor shops/stalls with approximate area of 56 square feet and prevailing rental rates of Kshs.52,000 inclusive of VAT which translates to Kshs.928.571 per square feet with the first shops fronting/overlooking Luthuli avenue with approximate area of Kshs.144.67 square feet with rental rates of Kshs.62,000.00 inclusive of VAT. This translates to Kshs.428,562.
 - c. Nelis Park, Off Luthuli Avenue Ground floor shops/Stalls with approximate area of 90 square feet listing rental rates of Kshs.27,800.00 (inclusive of VAT) translating into Kshs.308,889 per square feet.
 - d. Electronics House, Luthuli House where the first shops overlooking Luthuli Avenue measuring approximately 94.2 feet with prevailing rental rates of Kshs.51,000.00 (inclusive of VAT) which translates into Kshs.541.401 per square feet.
 - e. Barkat Biashara complex, River Road/Kumasi Road with ground floor shops fronting River Road with an approximate area of 388 square feet (double ceiling height) whose prevailing rental rates is Kshs.220.00 (inclusive of VAT).
10. According to the Landlord's valuer, the average exclusive monthly rental rate for comparable premises in the area analyze to about Kshs.465.00 per square feet. The valuer states that he did a market survey and based on the general understanding of the prevailing rental market in the subject area leading to an exclusive monthly rental of Kshs.512.00 per square feet for the subject premises.
 11. The subject business premises is given an area of about 134 square feet. According to the valuer, the shop enjoys good visibility and is well positioned on ground floor of Thande House at the inter-section of River Road and Luthuli Avenue. The building despite being fairly old is well maintained.
 12. The tenant's valuer in his assessment of the building housing the suit premises observes that the same is in sound structural condition and is in good state of repair and decoration. He gives the size of the suit premises as measuring 134.07 square feet or 12.45 square metres.
 13. I have noted that the landlord's valuer has used 3 comparables within the same building (Thande House) besides using 5 more from the neighbourhood in arriving at the rental assessment.
 14. He has observed at page 6 paragraph 2 as follows:-

“Average exclusive monthly rental rate for comparable premises in the area analyze to about Kshs.465.00Sq feet. Our market study further shows that most buildings levy service charge that is payable annually and separate from the charged rental rates”.
 15. At paragraph 4 of page 6, he goes on the state:-

“In the light of our market survey and based on our general understanding of the prevailing rental market in the subject area, we have adopted an exclusive monthly rental rate of Kshs.512.00 per sq foot for the subject premises”.
 16. He continues to observe that the recommended rental rate is at about 110% of the average rate in the immediate zone which is meant to reflect the fact that vacant ground floor shops fronting Luthuli Avenue are hard to obtain and they attract hefty goodwill charges.



17. With tremendous respect to the foregoing observations by the valuer, it is not in my opinion proper to increase the figure resulting from the market rental rate assessment based on factors like goodwill as the tenant herein is an old one in the premises and using a figure of Kshs.465 per square feet, the rent translates to Kshs.62,310/- inclusive of VAT. This is the amount that the tenant ought to pay exclusive of service charge.
18. I have noted that the comparables used by the tenant's valuer though taken from the neighborhood do not include any single comparable from the same building. They are for bigger premises except comparable no. 2 which is almost similar in size with the suit premises with a monthly average of Kshs.301.47 per square feet. It is not indicated when the last rent review was undertaken.
19. In the premises, I shall adopt the figure of Kshs.465 per square feet as suggested in the Landlord's valuers' report to arrive at a monthly rent of Kshs.62,310/- with effect from 1st January 2024 so as to allow the tenant time to adjust to the new rent.
20. As regards costs, the same are in this Tribunal's discretion under Section 12(1)(k) of Cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. Both parties have won as the rent has been increased to a figure below which the landlord had recommended in the tenancy notice. I shall therefore exercise my discretion to order each party to meet own costs.
21. In conclusion, the following final orders commend to me in this case:-
 - a. The Landlord's notice of increment of rent dated 21/11/2022 is approved with amendment under Section 9 (1) (a) of Cap. 301, Laws of Kenya.
 - b. The tenant shall pay a monthly rent of Kshs.62,310/- inclusive of VAT with effect from 1st January 2024 but exclusive of service charge.
 - c. Each party shall meet on own costs of the suit.

It is hereby so ordered.

JUDGEMENT DATED, SIGNED & VIRTUALLY DELIVERED THIS 22ND DAY OF MARCH 2024.

HON. GAKUHI CHEGE

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Judgement delivered in the presence of:

Cheboi holding brief for Miss Wacheke for the Landlord

No appearance for the Tenant

