



**Isaac Kuria t/a Mishku Communications v Nitin Shah t/a Jaykay  
Enterprises Ltd & another (Tribunal Case 48 & 57 of 2021 (Consolidated))  
[2023] KEBPRT 695 (KLR) (Commercial and Tax) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 695 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL CASE 48 & 57 OF 2021 (CONSOLIDATED)  
GAKUHI CHEGE, CHAIR  
NOVEMBER 10, 2023**

**BETWEEN**

**ISAAC KURIA T/A MISHKU COMMUNICATIONS ..... APPLICANT**

**AND**

**NITIN SHAH T/A JAYKAY ENTERPRISES LTD ..... 1<sup>ST</sup> RESPONDENT**

**J.K. WANDERI AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The tenant herein instituted Nakuru BPRT No. 48 of 2021 through a reference/complaint dated 31<sup>st</sup> March 2021 claiming that the landlord had instructed J.K. Wanderi Auctioneers to issue proclamation upon his property. He also complained that the landlord had illegally increased rent by 12%. He therefore prayed for restraining orders against the landlord.
2. The tenant simultaneously filed a notice of motion of even date seeking for orders prohibiting the landlord from harassing, intimidating and/or evicting, closing or threatening, attaching and or in any manner interfering with his peaceful occupation of the suit premises pending hearing and determination of the case in Nakuru during the next session. He also sought that J.K. Wanderi Auctioneers be restrained from attaching his property and selling the same by public auction and the OCS, Central Police Station does ensure compliance with the orders.
3. The tenant filed a supporting affidavit sworn on 31<sup>st</sup> March 2021 and set out the grounds on the face of the application to the effect that the landlord issued a proclamation over his property for distress of rent. He accuses the landlord of increasing rent by 12% annually.



4. According to the tenant, the monthly rent was Kshs.328,350/- by the time of making the application which had been increasing at a rate of 12% annually from Kshs.180,000/-. The proclamation issued by the 2<sup>nd</sup> Respondent was annexed as “1.k-1”.
5. On 2<sup>nd</sup> December 2021, this Tribunal delivered a ruling in respect of the said application and gave the following final orders in the matter:-
  - a. “The application dated 31/3/2021 is hereby dismissed with costs.
  - b. The interim orders herein granted are hereby discharged and vacated.
  - c. The landlord shall be at liberty to proceed to recover outstanding rent against the tenant by use of lawful means.
  - d. The reference being based on the same complaint is hereby marked as compromised and dismissed by dint of this ruling.
  - e. The costs of the application and reference awarded to the Respondents”.
6. The tenant subsequently filed a motion dated 15<sup>th</sup> December 2021 seeking in pertinent part for review and/or setting aside of the orders issued on 8<sup>th</sup> December 2021 and to issue relevant directions including reinstating the reference/suit for hearing for purposes of determining how much arrears were outstanding if any.
7. The application is supported by the affidavit of the tenant sworn on 15<sup>th</sup> December 2021 and the grounds on the face thereof. The tenant pleads that he had sought for production of a rent book and receipts for payments done by the tenant to enable the parties compute disputed sums and ascertain existence of any arrears which was not addressed in the ruling and was therefore an error apparent on the face of the record.
8. According to the tenant, the impugned ruling was highly prejudicial to the tenant as distress will mean placing more than 10 subtenants’ properties and livelihoods in jeopardy as no directions were issued in the ruling on the treatment of those tenants.
9. It is contended that the distress for rent cannot be allowed to proceed on doubtful “rounds” (sic) as it was brought out in the application that the arrears claimed were highly contested.
10. In the tenant’s view, dismissal of the reference was akin to condemning the tenant unheard against the tenets of natural justice which the Tribunal is called upon to uphold.
11. The tenant and the subtenants stood to suffer great loss should the execution proceed on doubtful grounds, the subtenants properties will be attached and sold off pursuant to arrears that have not been determined and which are highly contested by the Applicant.
12. According to his affidavit in support of the application, there was no basis to allow for blanket distress whereas he had sought for the landlord to provide receipts and a rent book to enable both parties calculate any arrears. He maintains that the arrears owing were not Kshs.10,000,000/- and that the Tribunal ought to have launched an inquiry to avoid injustice being visited upon him as the tenant without any mention of how the 10 sub-tenants in occupation of the premises should be treated.
13. The tenant deposes that he had made colossal investments on the property which cannot be cursorily terminated without supervision of this Tribunal in the interest of justice and 3<sup>rd</sup> party subtenants who are protected tenants.



14. The application was considered ex-parte on 24<sup>th</sup> January 2022 for appropriate orders. After several mentions, the matter was consolidated with Nakuru BPRT No. 57 of 2021 for hearing and disposal with BPRT No. 48 of 2021 being the lead file.
15. The landlord filed a replying affidavit in the first case which was sworn on 22<sup>nd</sup> March 2022. According to the landlord, the tenant has not convincingly demonstrated the alleged error apparent on the face of the record and the prayer for review of the orders of 2<sup>nd</sup> December 2021 lacked basis. In the landlord's view, the issue of rent book and receipts repeatedly raised in the Applicant's various applications were a mere technicality which the tenant was trying to cling to in order to delay and subvert the course of justice.
16. The landlord deposes that he presented to the Tribunal a clear rent record with all payments made by the Tenant/Applicant duly reflected in the schedule and that the tenant was given ample chance to interrogate the said record without any meaningful challenge being mounted on the rent status presented by the Respondent.
17. According to the landlord, the impugned ruling was based on evaluation of all material's by the Tribunal which was satisfied that the sum demanded was due and owing and revisiting the issues was Res judicata.
18. It is therefore the landlord's contention that the proper avenue for the tenant was by way of appeal. The tenant is accused of being engaged in vexatious litigation which is designed to obfuscate and in the process deny the Respondent enjoyment of his investment through various applications enumerated in the replying affidavit.
19. The landlord concludes that the instant application is brought in bad faith to delay his enjoyment of the fruits of the impugned ruling.
20. On 24<sup>th</sup> November 2022, the landlord was granted leave to file and serve his response to the claim filed by the tenant in BPRT No. 57/2021 within 14 days thereof. Both parties were directed to comply with Order 11 of the [Civil Procedure Rules](#) in the consolidated suit through filing and exchanging witnesses statements and duly paginated documents for use during the trial.
21. On 19<sup>th</sup> January 2023 when this matter came up for mention, the Tribunal directed that the application dated 30<sup>th</sup> August 2022 shall be subsumed in the main reference for hearing and determination. The said application is in file No. 48 of 2021.
22. The landlord issued the tenant with a tenancy notice dated 28<sup>th</sup> April 2021 seeking to terminate his tenancy over LR No. Nakuru Municipality Block 9/16 with effect from 1<sup>st</sup> July 2021 on account of being in rent arrears for a period exceeding two months.
23. The tenant filed a reference under Section 6(1) of [Cap. 301](#), Laws of Kenya vide Nakuru BPRT No. 57 of 2021 dated 29<sup>th</sup> April 2021 which was subsequently consolidated with BPRT No. 48 of 2021 objecting to the notice to terminate his tenancy.
24. The tenant filed a witness statement dated 28<sup>th</sup> July 2022 and a bundle of documents dated 30<sup>th</sup> August 2022 pursuant to directions issued by this Tribunal.
25. On the other hand the landlord filed the following documents-
  - i. Schedule of payments dated 7<sup>th</sup> November 2022.
  - ii. Replying affidavit of the landlord sworn on 23<sup>rd</sup> December 2022.



- iii. Witness statement of the landlord dated 4<sup>th</sup> January 2023.
  - iv. Landlord's list of documents and bundle of documents dated 11<sup>th</sup> January 2023.
  - v. Landlord's supplementary list of documents with updated rent statement with a debt of Kshs.13,444,494/24 as at 25<sup>th</sup> April 2023.
26. The tenant also filed a second list of documents dated 24<sup>th</sup> April 2023 attaching a letter dated 19<sup>th</sup> April 2023.
27. The matter proceeded by way of viva voce evidence with the tenant starting and the landlord thereafter testifying. None of the two called witnesses.
28. I am required to determine the following issues in this case-
- a. Whether the tenant's application dated 15<sup>th</sup> December 2021 and 30<sup>th</sup> August 2022 ought to be granted or dismissed.
  - b. Whether the tenant is entitled to compensation for improvements effected on the suit premises.
  - c. Whether the landlord is entitled to the claimed rent arrears and if so whether the claim ought to be set off against the compensation sought by the tenant against him.
  - d. Whether the notice of termination of tenancy ought to be approved or dismissed.
  - e. Who is liable to pay costs of the consolidated cases?
29. I propose to deal with all the issues together based on evidence adduced both oral and documentary, the parties' submissions and draw final conclusions after the analysis.
30. In his witness statement dated 28<sup>th</sup> July 2023, the tenant opposes the notice of termination of tenancy stating that he spent Kshs.14,416,750/- in constructing the suit premises on land parcel no. Nakuru Municipality Block 9/16 which was devoid of any developments at the time of entering into the lease agreement. The total value of the property at the date of the witness statement was Kshs.16,579,262/-.
31. The tenant admits falling into rent arrears which was made worse by the advent of Covid-19 pandemic which saw many subtenants vacate the premises thereby compromising his ability to pay the arrears. The tenant was served with notice to terminate tenancy by the landlord who had not considered the amount paid as security of rent deposit and compensation for structural improvements made thereon with his consent.
32. The tenant contends that he is willing to vacate the premises as a going concern but seeks compensation for the improvements done on the suit premises. The tenant relies on the valuation report by Zenith Management Valuers Limited dated 19/7/2022 which returns a value of Kshs.16,579,262.00 made up as follows:-
- a. Kshs.14,416,750.00 being total replacement cost.
  - b. Kshs.2,162,512.00 as statutory disturbance allowance (15%).
33. According to the tenant, the amount of rent arrears is in dispute as the same are calculated to include VAT payments which have been presented as arrears and that there are numerous payments made by him which had not been acknowledged by the landlord.



34. The tenant seeks that the amount determined to be in arrears be deducted from the sum of Kshs.16,579,262/- being the value of security rent deposit paid at the time of taking possession. He pleads that he should not be evicted without compensation and determination of the actual arrears which should be offset from such compensation and security deposit.
35. Among the other documents relied upon by the tenant is the letter of offer to lease dated 14<sup>th</sup> June 2016, valuation of the building dated 19<sup>th</sup> July 2022, valuation on commercial development bill of quantities of July 2022, tenant's schedule of rent payments and arrears up to February 2022 showing a balance of Kshs.10,894, 943.42 and the tenant's certificate of incorporation and resolution to act.
36. In his oral evidence before the court, the tenant stated that he filed an application in BPRT No. 57 of 2021 seeking for release of motor vehicle Reg. No. KCP 033B which was attached on 11<sup>th</sup> March 2022 on account of rent arrears owing to the landlord.
37. The tenant claims that he built the suit premises at a cost higher than what he owes the landlord. As at 25/11/2022, the tenant admits owing Kshs.10,960,646/- while the cost of construction was Kshs.16,575,262/-. The tenant had paid Kshs.540,000/- as three (3) months rent deposit. No receipt for VAT at 16% had been issued to the tenant.
38. In cross examination, the tenant confirmed that in 2016 when the suit land was offered to him by the landlord, there was a dilapidated building standing on the site. It was agreed that the tenant would remove the old building and put up another one. An agreement dated 17<sup>th</sup> June 2016 was entered into. It was for 5 years 3 months which had already expired at the time when the dispute arose.
39. The tenant admitted that VAT is payable. There was a clause for rent review at 15% per annum. The tenant does the business of subletting. He acknowledged being indebted to the landlord.
40. The letter of offer was subject to contract. Although the lease was for a fixed term, the landlord continued to receive rent after its expiry. The tenant wants the landlord to pay compensation for the improvements and offset the rent arrears against it. He also seeks for return of his attached motor vehicle. He stated that he has been paying Kshs.300,000/- as rent per month.
41. The landlord in his written statement of 4<sup>th</sup> January 2023 states that in the year 2016, the tenant herein approached Jackay Enterprises Limited which is registered as the proprietor of LR No. Nakuru Municipality Block 9/16 for purposes of being granted a lease over a portion of the premises for running a business consisting of M-Pesa Agencies, sale of clothes, shoes, phones and accessories and fast food.
42. The landlord instructed its advocates to prepare a letter of offer on 7<sup>th</sup> March 2016 for lease of 700 square metres. The tenant accepted the letter of offer and signed the letter of offer. He immediately took possession. It was a term of the tenancy agreement that the tenant was to pay Kshs.180,000/- plus VAT on quarterly basis in advance and that rent was to be reviewed upwards by 12% annually. The lease was for a period of 5 years 3 months from 1<sup>st</sup> April 2016. It was therefore expiring on 30<sup>th</sup> June 2021.
43. The tenant was allowed to renovate the premises upon taking possession at his own expense and the costs of such renovations were to be approved by the landlord in writing in advance. The renovations were also subject to competent architectural and contractor's recommendations and approvals from the relevant Government authorities both National and County.
44. From around April 2018, the tenant started defaulting in his rent payment and by June 2019, he owed Kshs.4,350,352.64/- as a result of which a demand letter was issued to him on 7<sup>th</sup> June 2019. The tenant acknowledged the debt by a letter dated 13<sup>th</sup> June 2019 promising to clear the same by end of the year.



45. He however continued to default and the arrears stood at Kshs.9,076,894.64 as at 31<sup>st</sup> December 2020 resulting into yet another demand letter dated 17<sup>th</sup> November 2020. He acknowledged indebtedness through a letter dated 27<sup>th</sup> November 2020.
46. Attempts by the landlord to recover the rent arrears through distress for rent were thwarted by the tenant's applications to the Magistrate's Court vide Miscellaneous Application No. E018 of 2022 and Tribunal case no. 48 of 2021. The tenant's attached motor vehicle remains with the Auctioneer to date. The tenant also filed case no. 57 of 2021 and in an application dated 30<sup>th</sup> August 2022 seeks for its release and for arrears owing to be set off against the value of improvements done on the suit property. The landlord objects to the said application as the improvements done on the property only serves the need of the tenant and are of no value to the landlord.
47. According to the landlord, the improvements cited by the tenant are grossly exaggerated and no approval of such developments was sought from the landlord in terms of clause 12(a) of the letter of offer dated 14<sup>th</sup> June 2016.
48. In the month of April 2021, the landlord instructed his advocates to issue termination notice on account of persistent default by the tenant which was served on 29<sup>th</sup> April 2021. The tenant filed a reference being Nakuru BPRT Case No. 57 of 2021.
49. The tenant is accused of failure to make any serious efforts to clear the arrears which have consistently remained at approximately Kshs.10,000,000/- as at the date of recording the landlord's witness statement. The tenant in the meantime has overstayed on the premises as the lease expired on 30<sup>th</sup> June 2021 and ought to vacate and hand over the same in its pre-tenancy condition. The tenant is at liberty to remove any structures that he has put up and pay outstanding rent arrears standing at Kshs.12,471,684/24 as at December 2022 according to the Landlord.
50. The landlord gave oral evidence in court and adopted his witness statement. He admitted that the tenant built a structure on the property leased out to him at his own expense as per clause 12 of the offer letter. He built a structure with stalls on it without approval of the landlord in regard to costs. The letter of offer required him to do so.
51. The tenant rents out all the stalls which were in occupation of subtenants as at the time of hearing of the cases. The tenant has not been paying rent and owed Kshs.13,444,494/24 as per the rent account statement attached to the landlord's further list of documents. The lease expired in 2021 and was not renewed but the tenant continued to hold over in the premises. According to the landlord, based on the escalation clause, the current rent ought to be Kshs.397,992/56 to date.
52. The tenant has not paid any rent above Kshs.300,000/- and had failed to pay rent regularly. The landlord stated that the tenant has never paid rent in cash. In cross-examination, the landlord stated that the lease was to be drawn by his advocates and that the tenant paid for the lease and that the lease was to be registered.
53. Although the landlord stated that the tenant was to leave the premises the way he found it, the letter of offer did not contain such a provision. The letter of offer does not indicate the state of the premises before the tenant took possession. The tenant was to renovate the premises and let it out to other persons. The landlord stated that he was not aware of the nature of developments. He did not object to the developments despite lack of approvals as it was at the tenant's costs. The landlord stated that it can be assumed that all approvals had been obtained as per clause 12.
54. The rent arrears claimed were inclusive of VAT as per the rent account statement that is Kshs.13,444,494/24 but VAT will only be paid upon settlement of the arrears. The landlord stated





- that he presumed that the tenant paid rent deposit as per the letter of offer. All businesses carried out in the premises was to be approved by the landlord. The deposit was refundable at the end of the tenancy.
55. According to the landlord, the improvements were to be left in the premises or the same was to be reverted to the original state. The letter of offer does not provide what was to happen to the improvements upon termination or lapse of the lease. The landlord stated that he was aware of the developments effected by the tenant.
  56. The landlord however stated that he did not undertake a counter-valuation as it did not arise and that he was not aware of value of the developments. The improvements are in form of stalls which are partitioned and made of steel. In re-examination, the landlord testified that the tenant found a stone structure on the suit land but wanted to create stalls. The landlord stated that he is interested in the space and not the structures.
  57. Upon cross-examination by the Tribunal, the landlord stated that he was not aware of any termination notices by the head tenant as he had no contract with them. The landlord stated that he did not know what the tenant would do with his subtenants.
  58. Both counsels filed submissions after close of the tenant's and landlord's cases which I have considered.
  59. The relationship between the two parties is predicated upon the letter of offer dated 7<sup>th</sup> March 2016 which was expressed to be "subject to contract". The tenant leased 700 square metres for use as offices, shops and vegetarian catering purposes only.
  60. The agreed rent was Kshs.180,000/- per month plus 16% VAT. The tenancy was for a period of five years 3 months commencing from 1<sup>st</sup> April 2016. Rent review upward was agreed upon at 12% at the conclusion of each one year. The tenant was to pay a deposit of three (3) months rent before entering into the premises which was refundable without interest at the expiry of the lease and delivery of the premises to the lessor.
  61. In regard to renovations, clause 12 of the letter of offer provides that the tenant will be allowed upon taking possession, to renovate the premises at his sole expense and that the cost of such renovation were to be approved by the lessor in writing in advance. The tenant was to procure competent architectural and contractor's recommendations and approval. It further provides that appropriate approvals not otherwise stipulated above, must be obtained from the relevant Government Authorities both National and County.
  62. The lessor's advocates were to attend to the transaction, to completion including and not limited to the drawing of the lease and all attendant professional services. No such lease was however availed despite the offer letter having been expressed to be "subject to contract".
  63. The tenant fulfilled his part of the bargain by signing the letter of offer and was put into possession of the suit premises. He demolished the existing structure and put up stalls for on letting to third parties who are still in occupation as subtenants. He experienced difficulties in payment of rent as a result of which demand letters were sent to him by the landlord's advocates.
  64. It is imperative to note that although the landlord seemed to suggest in his evidence before court that the developments did not receive his approval or that of the County and National Government authorities, no evidence of his objection against the developments nor that of the County and National Government were produced in this matter.
  65. In spite of the foregoing, the landlord continued to receive rent from the tenant derived from the developments erected on the suit premises for the entire period of 2016, 2017 until April 2018 when



the latter started defaulting. There was no issue raised on the said developments or subletting until the dispute found itself in court.

66. It is submitted by counsel for the landlord that neither of the parties raised any issues in relation to the terms of contract during the subsistence of the tenancy for the 5 years 3 months and that the doctrine of estoppel precludes either party from denying any term of the letter of offer during the tenancy period by claiming that the terms were not agreed upon yet they have been relying on those terms. Citing the case of [\*Impact Communications Limited v Kenya Commercial Bank Limited\*](#) (2017) eKLR in support of the submission that the letter of offer contained all the terms of the contract entered between the parties.
67. I agree with the landlord's submission that even without executing a lease, the letter of offer was binding upon both parties. This is the finding I made in a previous ruling delivered herein on 2<sup>nd</sup> December 2021 where I held as follows at paragraph 31-
- “The offer letter is signed by both parties and I agree with the landlord that it constitutes the contract entered into by both parties and the escalation is therefore legal and incapable of founding an injunction order”.
68. Consequently, what falls for determination by this Tribunal is how the letter of offer ought to be interpreted in regard to the issues of escalation of rent, payment of VAT and cost of improvements effected on the suit premises.
69. The letter of offer clearly stipulates at clause 5 (b) that VAT is chargeable on rent at 16%. It is not therefore in doubt that the tenant is liable to pay VAT.
70. The second point for interpretation is the question of escalation of rent. The letter of offer stipulated that escalation was to be at 12% per annum until 30<sup>th</sup> June 2021 when the lease expired. There is no doubt as that is what clause 8 of the letter of offer stipulates in that regard. After expiry of the lease term, I find and hold that the tenancy became controlled after the landlord continued to receive rent and allow the tenant to continue holding over. The applicable rent after 30<sup>th</sup> June 2021 remains at Kshs.328,550.86 as contained in the landlord's updated statement of rent account attached to the supplementary list of documents dated 28<sup>th</sup> April 2023. Since the tenancy became controlled, no rent increment could take place after 30<sup>th</sup> June 2021 without notice to do so under Section 4(2) of [\*Cap. 301\*](#), Laws of Kenya. Any amount charged above Kshs.328,550/86 shall therefore be disregarded or deducted.
71. In that regard, a sum of Kshs.1,476,122/64 ought to be deducted from the sum of Kshs.12,277,200.00 made up as follows:-
- a. Kshs.473,112.96 for the period July 2021- June 2022
  - b. Kshs.1,003,009.68 for the period July 2022- June 2023
72. A sum of Kshs.1,642,754/30 ought to be added for the period July 2023 to November 2023 to make altogether five (5) month's rent at Kshs.328,550.86 per month. This makes the total rent due to be Kshs.12,443,831/66 by the tenant to the Landlord as at 30<sup>th</sup> November 2023.
73. As regards costs of improvement, it is to be noted that Section 12(1) (i) of [\*Cap. 301\*](#), Laws of Kenya gives this Tribunal power to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill and improvements carried out by the tenant with the Landlord's consent.





74. At Clause 12 of the letter of offer dated 7<sup>th</sup> March 2016, it is provided as follows:-

- “ 12. Renovation: You will be allowed, upon taking possession to renovate the premises, at your sole expense, but so that,
- a. The cost of such renovation must be approved by the lessor, in writing, in advance.
  - b. You shall procure competent architectural and contractor’s recommendations and approval.
  - c. Appropriate approvals, not otherwise stipulated above, must be obtained from the relevant Government Authorities, National and County”.

75. My understanding of this particular clause in the letter of offer is that the tenant was allowed to undertake the renovation of the premises at his cost (without contribution by the Landlord) for the purposes of carrying out the business he intended to do therein. The letter of offer does not state what would happen to the improvements once the lease lapsed or expired. The landlord stated that the tenant can take away the improvements although the premises is occupied by subtenants who have not been issued with notices to terminate tenancy in line with Section 4(1), (2) & (3) of [Cap. 301](#), Laws of Kenya. Their tenancies outlives the termination of the tenant’s tenancy and therefore the premises shall remain the property of the landlord with the sub-tenants in occupation.

76. Secondly, why would the landlord require to grant approvals to the cost of renovation and the approval of Government Authorities and procurement of competent architectural and contractor’s recommendations and approval if it was the business of the tenant to put up the improvements at his own cost without expecting any compensation?

77. There being ambiguity in the letter of offer in regard to what will happen to the improvements erected by the tenant, the provisions of Section 120 of the [Evidence Act](#), Cap. 80, Laws of Kenya comes into play. The said section provides as follows:-

“When one person has by his declaration act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he or his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing”.

78. The tenant erected the building on the suit property without any objection by the Landlord in regard to the issue of costs of the improvements, the approvals and even the subletting of the suit premises devoid of his approval. He is deemed to have acquiesced in the said acts or to have consented thereto and cannot be heard to bring the issues of approval after the rent dispute arose. All was well before then and the landlord continued to receive rent from the tenant derived from the suit premises which were erected by the latter.

79. I therefore find and hold that the tenant is entitled to compensation for the improvements erected on the suit premises. I note that only one valuation report was presented in evidence before this Tribunal by the tenant. The said valuation report ascribes the value of improvements at Kshs.16,579,262/- made up as follows:-

- a. Total replacement cost Kshs.14,416,750.00



- b. Statutory disturbances allowance (15%) Kshs.2,162,512.00/-.
80. I do not understand the aspect of statutory disturbances allowance of 15% given in the report and I am however persuaded that the value of Kshs.14,416,750.00 is justified as no other report has been presented to contradict the same. The landlord in cross examination stated that he does not know the value of improvements erected by the tenant and requires the tenant to remove the building as he does not need it. It is neither legal nor justified for this Tribunal to make such an order more so when the premises are occupied by subtenants who are not parties to this case and whose tenancies are protected under [Cap. 301](#), Laws of Kenya.
81. I shall allow the value of compensation to be set off against the rent arrears of Kshs.12,443,831/66 to leave a balance of Kshs.1,972,918/34 payable to the tenant being the excess.
82. Although the landlord was entitled to levy distress against the tenant pursuant to the ruling of this Tribunal delivered on 2<sup>nd</sup> December 2021, it is now clear that the tenant is entitled to the release of motor vehicle Registration No. KCP 033B held by the Auctioneers who shall thereafter file a bill of costs for assessment/taxation by this Tribunal under the [Auctioneers Act](#) for settlement by the tenant.
83. In the premises, I find that the tenant's applications dated 15<sup>th</sup> December 2021 and 30<sup>th</sup> August 2022 have merit and are hereby allowed. I further hold that the tenant is entitled to compensation for improvements effected on the suit premises in the sum of Kshs.14,416,750.00 which shall be offset against the rent owing to the landlord in the sum of Kshs.12,443,831/66 as at 30<sup>th</sup> November 2023 to leave the balance due to the tenant at Kshs.1,972,918/34.
84. The landlord's notice to terminate the tenant's tenancy is hereby approved on grounds of default of payment of rent for more than 2 months and the tenant shall vacate from the suit premises by 30<sup>th</sup> November 2023 and any sub-tenants in the premises shall henceforth pay rent to the landlord.
85. In regard to costs, I find that both parties have succeeded in their respective claims and pursuant to Section 12(1)(k) of [Cap. 301](#), Laws of Kenya, each party shall meet own costs of the suit.
86. In the final analysis, the following orders commend to me in this matter:-
- The tenant's applications dated 15/12/2021 and 30/8/2022 are hereby allowed.
  - The tenant's tenancy over LR No. Nakuru Municipality Block 9/16 is hereby terminated and the tenancy notice dated 28/4/2021 is thus approved.
  - The tenant shall vacate the suit premises by 30<sup>th</sup> November 2023.
  - The landlord is entitled to Kshs.12,443,831/66 in rent arrears against the tenant for the period ending 30<sup>th</sup> November 2023.
  - The tenant is entitled to compensation for improvements effected on the suit premises in the sum of Kshs.14,416,750.00 which value shall be offset against the rent arrears leaving a balance of Kshs.1,972,918/34 as the amount payable by the landlord in respect thereof.
  - The tenant shall be entitled to return of his motor vehicle Reg. No. KCP 033B which is held by the Auctioneer pursuant to distress for rent and the auctioneer is ordered to release the same unconditionally.
  - The auctioneer shall file his bill of costs for the distress of rent undertaken for assessment/taxation by this Tribunal for settlement by the tenant upon issuance of a certificate of costs.



- h. The landlord shall refund a sum of Kshs.540,000/- paid by the tenant as security for rent deposit to the latter.
- i. The OCS, Nakuru Central Police Station shall assist in enforcing compliance with any of the foregoing orders.
- j. Each party shall bear own costs of the suit.

It is so ordered.

**JUDGEMENT DATED, SIGNED & VIRTUALLY DELIVERED THIS 10<sup>TH</sup> DAY OF NOVEMBER 2023.**

**HON. GAKUHI CHEGE**

**FOR: CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Judgment delivered in the presence of

Wairimu for the Tenant

Mwangi holding brief for Mburu for the Landlord

Later:

**Mwangi:** I pray for stay of execution for 45 days.

**Wairimu:** We can have stay of execution on the other orders except the one on release of the motor vehicle which continues to accrue storage charges.

**Mwangi:** I would prefer to have an all inclusive order for stay as all are interconnected.

**Order:**

There shall be stay of execution for a period of 45 days on all the reliefs granted except the order for release of motor vehicle Registration No. KCP 033B which shall be given to the tenant forthwith to avoid escalation of storage charges.

A copy of the judgement shall be supplied to the parties upon payment of the requisite court fees.

**HON. GAKUHI CHEGE**

**FOR: CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

