



**Karissa & another v Matheka & another (Tribunal Case E327 of 2021)  
[2024] KEBPRT 1287 (KLR) (Civ) (5 September 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1287 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E327 OF 2021  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
SEPTEMBER 5, 2024**

**BETWEEN**

**JUDY MWELU ..... 1<sup>ST</sup> APPLICANT**

**SILVESTER KARISSA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PETER MATHEKA ..... 1<sup>ST</sup> RESPONDENT**

**LAZARUS MATHEKA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This Judgement relates to only one issue. The rent payable on Title NO. MASII MITHINI/143. But before we come to the determination of the same, we need to highlight the long and checkered history of the matter. It started with the Tenants' reference dated 7/4/2021. The same together with the notice of motion application of even date were founded on section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) ACT](#) (Cap 301) hereinafter "the Act"
2. The Tenants namely Judy Mwelu and Silvester Karissa grieved that the 1st and 2nd Respondents were denying them quiet possession of the demised premises and had also arbitrarily increased the rent payable on the premises from Kshs 10,000/= to Kshs 20,000/= following the process of the law.
3. It is important to note that Silvester Karissa, the purported 2nd Tenant and Peter Matheka the purported 1st Respondent remained Tenant and Landlord at large respectively and there was no mention of the two during the entire proceedings though their names kept appearing in the pleadings.
4. By an order made on the 2/12/2024 by Hon. A. Muma, the Respondents were restrained from increasing the rent payable from Kshs 10,000/= to Kshs 20,000/= pending the hearing and



- determination of the reference. The Respondents were also restrained from interfering with the Tenants' quiet possession of the demised premises.
5. This matter took a different turn when there was filed the notice of motion dated 25/7/2022. The applicants were Lucia Ndululu Kimithi, Nzivo Muia Kimithi, Stellamaris Mbithe and Michael Kasio. Lucia and Nzivo are sister and brother to the 2nd respondent Lazarus Matheka whereas the 3rd & 4th interested parties are their niece and nephew.
  6. The four sought that they be enjoined as interested parties in these proceedings as they are sister, brother and children respectively to the owner of the title no. Masii/Mithini/143 namely Ruth Nzivulu Matheka and therefore with direct interest to the management of the demised premises and of the income being generated therefrom by way of rent.
  7. By an order issued by Hon A. Muma on the 27/7/2022, the applicants were enjoined in these proceedings as the 1st to 4th respondents/interested parties. The court was to later on the 27/1/2023 deliver a judgement that incorporated the reference and notice of motion application both dated the 7/4/2021 and the interested parties' notice of motion application dated 25/7/2022.
  8. The import of the said judgement was that; -
    - (i) Landlords allowed to vary the monthly rent payable to Kshs 20,000/= per month from February, 2023".
    - (ii) "The same shall be paid to the Tribunal in light of the succession cases ongoing or yet to be commenced more particular Masii/Mathini/143 where the suit premises is located"
    - (iii) Parties to bear their own costs"
  9. The Tenants were however dissatisfied with the said judgement and filed the notice of motion application dated 5/2/2023. The motion sought for the following orders ; -
    - 1) Spent
    - 2) That this Honourable Court be pleased to review its Ruling delivered on the 27/1/2023
    - 3) That this Honourable Tribunal be pleased to stay, review and/or suspend the enforcement and/or execution of the ruling delivered on the 27/1/2023 and all consequential process arising therefrom pending the hearing and determination of this application
    - 4) That the tenant be allowed to pay rent at the old rate of Kshs 10,000/=per month pending succession proceedings
    - 5) That the costs of this case be provided for
  10. After the application was canvassed, Hon A. Muma delivered a Ruling on the 22/11/2023 and made the following orders;-
    - a) I allow the Tenants' application dated 5/2/2023. Tenants to continue paying rent at Kshs 10,000/= every month pending full hearing
    - b) The Tenant to file a valuation report in 30 days
    - c) Hearing for rent assessment on 24/1/2024



- d) Tenant's Advocates at liberty to cease acting after service of hearing notice upon the Tenant and filing an affidavit of service
  - e) Leave to appeal granted to the Landlords
  - f) Thrown away costs assessed at Kshs 10,000/= in favour of the Landlords
11. By directions issued by Hon. A. Muma on the 4/4/2024, this matter was ordered to be placed before Hon. Joyce Murigi, a Registered and Practicing Valuer and who sits in a panel with Hon. Ndegwa Wahome, MBS to rule on the rent payable on the demised premises by having due regard to the parties respective valuation reports.
  12. The Landlords valuation report is by M/S Quince Real Estate and it is dated 2/2/2024. That for the Tenants is by Proland Realtors Limited and is dated the 16/1/2024. Over and above the valuation reports, we found it desirable that the Valuers concerned testified and were cross examined on their respective reports.
  13. The Tenant's Valuer Mr. Nicholas Kimathi testified on the 11/6/2024. He is a registered and practicing Valuer. He testified that in the valuation , he used the market rental comparison approach and fair market rent rates, On cross-examination, he claimed that his comparisons were not in the report but in his private notes. He proposed a rent of Kshs. 7,000/= per month and a maximum of Kshs 10,000/= in case the premises were renovated. The report was produced as exhibit No. 1.
  14. The Valuer for the Landlord M/S Linet Mwende Ngei testified on the 26/7/2024. She is a registered and practicing Valuer. Her report is dated 2/2/2022 under the firm name of Quince Real Estate. She said that she used the contractors method/cost approach of valuation. To her, there were no sufficient and/or enough premises for either market value or the comparable methods of valuation.
  15. However on cross examination, she indicated that she had also employed the comparable method to an extent and found that an Agrovet shop of the same size with the suit premises was charging rent at Kshs 40,000/= whereas a Butchery of the same size was charging Kshs 25,000/= in the year 2017. She however did not incorporate the comparables in her report.
  16. The witness produced a bundle of documents namely the valuation report, her certification as a Valuer, the certification of her employer Mr. Joseph Mwangi Mutiso as a Valuer, their gazettement in the Kenya Gazette as Valuers, a receipt on ownership of the plot from Machakos County Government dated 16/3/2021, the annual practicing certificates for herself and Joseph Mutiso Mwangi as exhibit no. 1.
  17. It was her evidence that the reasonable rent payable on the premises was Kshs 35,000/= inclusive of electricity, water and service charge.
  18. At the close of the hearing, both opted to rely on their pleadings already on record.
  19. The question of assessment of rent is a well beaten path with settled guidelines and principles on how to navigate the same. To start with, Section 9(2) of the Act provides that;- "without prejudice to the generality of this section, a Tribunal may upon any reference :-
    - a. Determine or vary the rent to be payable in respect of the controlled tenancy, having regard to the terms thereof and to the rent at which the premises concerned might reasonably be expected to be let in the open market and disregarding-
      - i. any effect on rent of the fact that the tenant has, or his predecessors in title have, been in occupation of the premises



- ii. any goodwill attached to the premises by reason of the carrying as threat of the trade, business or obligation of the Tenant or any such predecessors
    - iii. any effect on rent of any improvement carried out by the tenant or any such predecessor otherwise than pursuant of an obligation to the immediate landlord;
  - b. Terminate or vary any of the terms or conditions of the controlled tenancy, or any of the rights or services enjoyed by the tenant, upon such conditions, if any, as it deems appropriate”
20. Among the powers of this Tribunal includes addressing the question of rent variations and all matters related to rent payment. Section 12(1) (b) of the Act further defines some of the powers given to this court as follows:-
- “To determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof”
21. In determining this question, we also rely in the celebrated case of Tala Investment Ltd vs Green Spot Limited, Civil Appeal No 269 of 1993, Justice Shah as he then was, made the following holding:-
- “In dealing with principles upon which a Tribunal should act in assessing rent, its duty is to consider all reports properly before it. The Tribunal must go into individual comparables to decide which is a better report rather than merely arrive at a mean figure of the Landlord’s and the Tenant’s Valuer’s reports. That is not the proper criteria.”
22. The proper criteria in assessment of rent was further provided in the court of appeal decision in the leading case of Cleaners Ltd v Barclays Bank & Co [1972] EA 188, the court of Appeal of East Africa held that:-
- “It is the reasonableness of the rent that must be in the forefront of the Tribunal’s investigations and determination. It must be the concern of this court too. The average rates per square foot or meter of a number of nearby buildings on the ground floor premises in which similar trades exercised are among other things relevant to assessing the rent that would reasonably be expected in the open market.”
23. Though the tenant’s Valuer opted to use the comparison method of valuation, no comparisons were provided to help him reach the figures he did. It is therefore clear that the report thereof did not meet the market rental comparison methodology approach that they purported to employ
24. On the other hand, the Landlord’s Valuer opted to employ the market value approach. She testified that the methodology looked at the estimated amount for which an asset or liability should exchange on the valuation date. To her, the market dictated the rent of Kshs 35,000/= per month for the shop otherwise known as Masii Cyber Centre to be found on LR No. Masii/Mathini/143/ In our view, the Landlord’s report is a better report compared with that of the Tenant.
25. However, before we adopt the said report in totality in assessing the rent payable, we have noted that, the respondents have not contested that they had intended to increase the rent payable on the premises at Kshs 20,000/= exclusive of taxes and service charge if at all.
26. Though not an issue for determination in this judgement, we need to address the question of the purported termination of the tenancy herein as raised by the respondents. The respondents have continually complained that their notice to vacate by the letter dated 17/11/2020 was never considered. In our view, the said notice was illegal ab Initio. It was not in compliance with section 4 (2) of the Act.



27. The section provides that;-

“A Landlord who wishes to terminate a controlled tenancy, or alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under such tenancy, shall give notice in that behalf to the tenant in the prescribed form”

28. In our view, the sad letter dated 18/09/2020 (confirm correct date from the file) could not constitute a valid termination notice. The locus classicus case of Fredrick Mutua Mulinge T/A Kitui Uniform v Kitui Housing Co-operative Society Ltd [2017] eKLR addressed a similar situation and held as follows;-

“It is clear from the foregoing authorities that the tenancy notice dated 28/6/2014 was null and void for failing to give the appellant two months notice as required under the Act and as such was of no legal effect. Life could not be breathed into the defective notice by the letter dated 1/7/2014 through which the respondent purported to amend the effective date of the notice. The letter was not a notice in the prescribed form provided by the ACT”.

29. From a casual look, the purported termination notice, it is clear that the Landlord did not give the two (2) clear months envisaged by the law. The notice if it was in the proper form, it could only have taken effect in the 1/12/2020. Section 4(4) of the Act provides that;-

“no tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein”

30. The purported notice of termination did not include the grounds under which the same was founded. This was contrary to the mandatory requirements of the section 7(1) of the Act. The section provides that;-

“where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice....”

31. It is our respectful view then, that if the aforesaid notice of termination dated 18/09/2020 was under consideration, we would have dismissed the same without much ado.

32. Having evaluated this matter in its totality including the averments by the interested parties herein, we are of the view that the justice of the matter speaks to each part.

33. In the final analysis, and in view of the reason that no other order was sought to be reviewed from the judgement dated 27/1/2023, we make the following orders;-

1. That the Tenants shall be allowed quiet possession of the demised premises known as Masii Cyber Centre as found on LR No. Masii/Mathini/143.
2. That the rent for the demised premises is assessed at Kshs 20,000/= exclusive of any taxes or charges to be paid at the Tribunal before the 10th of each month in advance effective the 10/9/2024 until such time that the estate relating to Title No. Masii/Mathini/143 is completed.
3. That each party shall bear own costs of the proceedings.

Those are the orders of the court.



**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 5TH DAY OF SEPTEMBER 2024 IN THE PRESENCE OF INTERESTED PARTY, JUDY MWELU THE TENANT IN PERSON AND AND MR. MBURU HOLDING BRIEF FOR MISS MUTINDA FOR THE LANDLORD.**

**HON. NDEGWA WAHOME, MBS**

**(PANEL CHAIRPERSON)**

BUSINESS PREMISES RENT TRIBUNAL

AND\*\*

HON. JOYCE MURIGI

(MEMBER)

