



Gathura v Mahugu & another; Ndumia (Interested Party) (Tribunal Case E047 of 2022) [2023] KEBPRT 41 (KLR) (27 January 2023) (Ruling)

Neutral citation: [2023] KEBPRT 41 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E047 OF 2022
A MUMA, VICE CHAIR
JANUARY 27, 2023**

BETWEEN

JAMES GICHUKI GATHURA LANDLORD

AND

JOHN NJOGU MAHUGU 1ST TENANT

WINFRED NYAGICHUHI GACHEMI 2ND TENANT

AND

MARGARET WANJUGU NDUMIA INTERESTED PARTY

RULING

A. Parties & their Representatives

1. The Applicant James Gichuki Gathura is the Landlord and rented out the Suit Property situated on Plot No. Nyeri/Municipality Block 11/210 (hereinafter the “Landlord”).
2. The Landlord/Applicant appears in person in this matter.
3. The Respondents are the Tenants and rented space on the suit premises (hereinafter the “Tenants”).
4. The firm of M/S V.E Muguku Muriu & Co. Advocates represents the Respondent in this matter.

B. Dispute Background

5. The Applicants are co-tenants occupying the suit premises, where they conduct their respective businesses, managed by the managing agents, Diligent Realtors.
6. The Tenants asserted that they have been paying rent to the managing agents and adduced evidence in form of payment receipts to buttress the same.



7. However, the Landlord purported to evict the Tenants and instructed his agents, Regent Auctioneers, to evict them from the premises on August 5, 2022. The Tenants averred that the auctioneers visited the suit premises and conducted a proclamation to their respective businesses for attachment of the Tenants' movable property.
8. Consequently, the 1st Tenant filed a Reference dated August 4, 2022 and a Notice of Motion application of even date before this Tribunal.
9. The Landlord filed a Reference and a notice of motion application dated 14th April 2022, which complaint concerned non-payment of rent by the Tenants.
10. The Tenant filed a replying affidavit dated August 4, 2022.

C. Issues For Determination

11. What is the outstanding arrears as claimable by the Landlord?

D. Analysis and Determination

What is the outstanding arrears claimable by the landlord?

12. The origin of this matter stems from the fact that the Landlord claims that the tenants have defaulted in paying rent from the month of July 2021 to April 2022 for the 1st Tenant, September 2021 to April 2022 for the 2nd Tenant and October 2021 to April 2022 for the 3rd Tenant
13. In response the Tenant has presented before this Tribunal that the issue arose as a result of orders issued in a previous matters which was determined by this Tribunal being BPRT 25, 22,24 and 26B of 2015 Nyeri. In the Ruling the former chairperson on 17th July 2015 Hon. Mbichi Mboroki issued orders that rent be increased to Kshs 64.75 per sq ft as the average comparable to be used by the Landlord/ Respondent and the Tenants/Appellants in making the following determination Rent Payable by Tenant in BPRT 22/2015 assessed at Kshs 20,000/-, BPRT 26B/2015 assessed at Kshs 14,300/-, BPRT 21/2025 assessed at Kshs 20,400/- and BPRT 24/2015 assessed at Kshs 14,800/-.
14. The said orders were appealed against on the basis that reliance was heavily placed on the valuation report tabled by the Landlord without due consideration to their valuation report. In actual fact what the chairman did was to average between the landlords report at Kshs 84 per sq ft and Tenants at Kshs 45.50 per square ft to come up with an objective open market rent that is Kshs 64.75 per sq ft
15. The Judge at para 46,47 and 48 agreed with the Tenants and held that the rates decided by the Tribunal could not be allowed to stand as there was need to consider each valuation report carefully especially the comparables in assessing whether it represents an open market rent of the premises and decide which is better and not take the simplistic way of merely taking the average of all the comparables presented by both sides.
16. The the matter be referred back to the Tribunal for reassessment of the rent values and in doing so the Judge said 'the tribunal having realized that the two valuation reports had serious disparities ought to have employed the services of a valuer to carry out the valuation of rent payable on this premises. I therefore find that by relying heavily on the formulae of comparable, the chairperson adopted an erroneous formula in arriving at the rent increase..'
17. Having perused the file I do not find any proof that another valuation has been carried out to determine the right rent payable by the Tenants. As a result, I find that it is not possible to determine the matter to finality before complying with the orders issued by the ELC NO. 32 of 2015.



E. Orders

18. The upshot is that the Landlord's Application dated 14th April is compromised as follows;
- a. An independent rent valuation report shall be carried out by a valuer appointed by the Tribunal (Bernard Gachoka, Director - Value Line Consulting Limited, Tel+2542024xxxx Mobile +25472360xxxx and a report tabled within 30 days.
 - b. The Tribunal Appoints
 - c. The Landlord shall bear the cost of this valuation to be advised by the registry.
 - d. The reference shall be fixed for hearing on March 7, 2023 upon receipt of the report.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 27TH DAY OF JANUARY 2023 IN THE ABSENCE OF THE PARTIES

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

