



**Singh & 3 others v Ghatahora (Tribunal Case E828 of 2019)
[2024] KEBPRT 1288 (KLR) (Nairobi) (10 September 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1288 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
NAIROBI
TRIBUNAL CASE E828 OF 2019
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
SEPTEMBER 10, 2024
FORMERLY E826,827,828 AND 829 2019 (NAIROBI)**

BETWEEN

PARAMJIT SINGH & 3 OTHERS APPLICANT

AND

PARDEEP GHATAHORA RESPONDENT

JUDGMENT

1. This Judgement relates to the proceedings initiated in respect of notices issued by the Landlord to alter the terms of the tenancy of the four(4) Tenants herein. The four (4) termination notices are dated the 30/07/2019 and are all anchored on section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap 301) hereinafter “the Act”
2. The four termination notices were issued to the four (4) tenants housed within Land Reference No. 209/4678 as found along Enterprise Road within the Industrial area part of the Nairobi City.
3. The Landlord in his endeavor to alter the terms of the tenancy by increasing the rent thereof was stated to be on the ground that;-

“The current rent payable by yourself is far below the fair Open Market Rent payable for comparable premises”



3. The 1st notice relates to M/S DIASTAR AUTOCARE CENTRE. The same is dated 30/7/2019. It is that notice that triggered the filing of the reference dated 15/8/2019 by M/S DIASTAR. The later objected to the notice by filing the reference which sought for

“I therefore request the Tribunal to investigate this matter and determine the issues involved”

The Landlord in the notice had sought to increase the rent payable on the premises from Kshs 65,000/= to Kshs 180,000/= exclusive of VAT.

The matter was filed under BPRT case number 826 of 2019.

4. The 2nd notice was also dated 30/7/2019. It was issued to Paramjit Singh C/o Appar Tech Ltd. In response the Tenant PARAMJIT SINGH filed the reference dated 15/8/2019 under BPRT Case No. 827 of 2019. In this case the Landlord intended to increase the rent payable on the demised premises from Kshs 70,000/= to Kshs 180,000/=
5. The 3rd notice was also dated 30/7/2019. It sought to increase the rent payable from Kshs 175,000/= to Kshs 280,000/= exclusive of VAT. This triggered the filing of BPRT Case No. 828 of 2019. The notice was addressed to Gurmukh Singh.
7. The final notice was also of even date just like the others. It was addressed to Paramjit Singh C/O Vishkarma Industries Ltd. The Landlord intended to increase the rent from Kshs 60,000/= to Kshs 260,000/=
8. When BPRT Case Numbers 826,827,828 and 829 of 2019 came up for hearing on the 5/12/2019 before Hon. Mbichi Mboroki, the court directed that the four files be consolidated and be heard as BPRT Case No. 828 of 2019.
8. In the cause of these proceedings, the Tenants filed a notice of preliminary objection dated 1/7/2020. In the notice, they questioned the ability and/or capacity of the Landlord to issue the termination notices dated 30/7/2019. The same was canvassed and by a Ruling delivered by Hon Cyprian N. Mugambi (Chairperson) on the 30/8/2021, the notice of preliminary objection was dismissed with costs to the Landlord.
8. Being dissatisfied by the said Ruling, the Tenants filed an Appeal vide Nairobi Civil Appeal ELCA Case No E028 of 2023 and which Appeal was also dismissed by the Judgement of the Honourable Justice J. Mogeni delivered on the 27/9/2023.
- The Tenants were also condemned to pay the costs of the Appeal to the Landlord.
8. We have spoken to the history of this matter so that the delay of five (5) years before its conclusion can be understood. After the disposal of the matter by the Environment and Land Court, directions were taken to canvass the reference herein by way of written submissions.
8. The Landlord's submissions in respect of all the four (4) Tenants are dated the 30/11/2021 whereas those for the Tenants are dated 21/11/2021. The Landlord also filed the valuation report by M/S Fortune Realtors Ltd which is dated the 5/12/2019 and signed off by one Eng Oyoo B.O, a Registered and Practicing Valuer.
8. The Tenants on the other hand filed four valuation reports in respect of each of the premises occupied by the four Tenants namely Diastar Autocare Centre, Paramjit Singh c/o Appar Tech Ltd, Gurmukh Singh c/o Nasib Industrial Supplies Limited and Glory Paints, Nairobi and finally Paramjit Singh C/O Vishkarma Industries Ltd.



14. At this point, we would wish to in brief note the evidence of both parties as the same informs the final determination of this matter;-

A. The case for the tenants is that;-

- (i) The ideal rent payable by M/S Diastar Autocare Centre is Kshs 68,569/= and not the amount suggested by the Landlord at Kshs 180,000/= from the current rent of Kshs 65,000/=
- (ii) The reasonable rent to be paid by M/S Paramjit Singh T/A Appar Tech Ltd was Kshs 75,206/= and not as suggested by the Landlord at Kshs 180,000/= from the current rent of Kshs 70,000/=
- (iii) The ideal rent to be paid by Gurmukh Singh T/A Nasib Industrial Supplies Limited and Glory Paints, Nairobi was Kshs 163,744/- and not the one suggested by Landlord at Kshs 280,000/= from the current rent of Kshs 175,000/=.
- (iv) That M/S Paramjit Singh T/A Vishkarma Industries should pay Kshs 71,486/= and not Kshs 260,000/= from Kshs 60,000/= as suggested by the Landlord
- (v) The Tenants put reliance on the aforesaid four (4) valuation reports dated the 8/6/2020 signed by M/S S.N Ndirangu and B.K Gachoka both Registered and Practicing Valuers working under the name and style of Value Line Consulting Ltd
- (vi) They had carried out major renovations on the premises and were also paying land rates and rents which required the court's consideration
- (vii) Their valuation reports reflected the reality on the ground and that the valuation report by the Landlord was misplaced and misleading.

B. The case for the landlord was that;-

- I) Just like the Tenants, they applied the "Comparison Method of rental values in the neighbourhood in carrying out the rent assessment"
- ii) The valuation was based on the current market value
- iii) The average cost per square foot (sqft) for buildings of the same age with the demised ones were as follows;-
 - a) Office space - Kshs 40/= to 45/= per sqft b) Warehouse – Kshs 30/= to 35/= per sqft c) Court Yard Kshs 20/= to 25/= per sqft
- iv) Despite the provided charges for the office, warehouse and court yard as above, the Landlord has charged well below the valuation report @Kshs 35/= for the office, Kshs 30/= for the warehouse and Kshs 15/= for the court yard.
- v) The Tenants have not provided any basis for the recommended rent
- vi) Though most of the tenants did not allow access to their respective premises, the valuers used data available with the Landlord to work on the measurements (sqft) and therefore reach the reasonable rent payable.
- vii) They had demarcated the charges/rent to include those for the offices, storage, warehouse, kitchen and covered yard and which the Tenants' Valuers had not done



viii) The notice to alter the terms of the Tenancies herein should therefore be upheld and the same to take effect on the 1/10/2019.

8. Having perused all the filings by the parties including the respective Affidavits, the valuation reports and submissions, we are of view that the issues for determination in this matter are the following:-
- A. Whether the Landlord's notices to alter the terms of the Tenants' respective Tenancies dated 30/7/2019 are merited
 - B. When should the proposed rent increment take effect if allowed;and
 - C. Who should bear the costs of this suit
8. Before we delve into the issues as identified herein above, we wish to acknowledge that we have deeply benefitted from the evidence presented by both parties which includes the affidavits, the valuation reports and the submissions thereof and thank both Counsels for the same.

Issue A.-Whether the Landlord's notice to alter the terms of the Tenants respective Tenancies dated 30/7/2019 are merited

17. It is unfortunate that it will be exactly five (5) years on the 30/9/2024 since the Landlord intended to have the proposed rent increment effected. We have however outlined the checkered history of this suit and what had led to such inordinate delay before the conclusion of this matter.
18. In rendering our determination herein, we are alive to the provisions of section 9(2) of the Act which 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 on thereat of the trade, business or occupation 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 pursuance 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.

19. 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”



20. The onerous task and duty of making a decision like in this matter is purely discretionary but the same must be exercised judicially. Courts have on several occasions rendered themselves on the requirements of the exercise of such discretion.
21. In the case of *Cleaners Ltd -vs- 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 are carried out are among other things relevant to assessing the rent that would reasonably be expected in the open market.
22. Further, in the case of *Tala Investment Ltd vs Greensport Ltd*, 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”.
23. In this matter, we have noted that the Landlord’s Valuer’s report is concise in addressing the issues at play. It has employed the comparison methodology by using at least seven (7) comparables to come up with the various rents charged for the office space, godowns and court yard within the area where the demised premises are situate.
23. We also appreciate that the valuation report by M/S Fortune Realtors Ltd has addressed age of the premises to include whether new, newly renovated or old and came up with categories of rents in all those obtaining situations.
25. On the part of the Tenants, though their valuation reports are elaborate and that each report addressed the concerned spaces of the respective Tenants, the reports left out very fundamental information.
26. All the Tenants’ reports did not address the question of the age of the comparable buildings, the cost of spaces in relation to warehouses and courtyard; and worked with global figures of the comparable premises. This is not helpful to this court. We would therefore go by the report by M/S Fortune Realtors Ltd for the Landlord as the same is the better report, is reasonable and meets the parameters as set down by the law and as explained herein before.
27. Though none of the parties explained the last time that there was rent increment, it is plain from the market analysis by both Valuers, that there was need for rent increment. It must therefore have taken sometime before the present proposed rent hike which was meant to take effect on the 1/10/2019.
28. This reality fortifies the Landlord’s intention to increase rents as proposed.
29. The proposal by the Landlord is to increase rent into the new rates in exclusion of taxes. That is the value added tax that is chargeable. This position on payment of VAT outside the rent payable has not been contested by the Tenants. They were only heard to ask that their improvements of the respective spaces, their payment of land rates and rents also be considered in our determination.
30. Having taken all materials placed before this court into account, we shall uphold the Landlord’s notices to alter the terms of the tenancies herein to the following effect;-



- (i) The Rent payable by M/S Diastar Autocare Centre, the Tenant in BPRT original case no. 826 of 2019 shall be Kshs 180,000/= per month exclusive of VAT
- (ii) The Rent payable by M/S Paramjit Singh T/A Appar Tech Ltd, the Tenant in BPRT original case no. 827 of 2019 shall be Kshs 180,000/= per month exclusive of VAT
- (iii) The Rent payable by M/S Gurmukh Singh T/A Nasib Industrial Supplies Ltd & Glory Paints, Nairobi the Tenant in the lead case no. 828 of 2019 shall be Kshs 280,000/= per month exclusive of VAT; and
- iv) The Rent payable by M/S Paramjit Singh T/A VishKarma Industries Ltd, the Tenant in BPRT original case no.829 of 2019 shall be Kshs 260,000/= per month exclusive of VAT

Issue No. B- When should the rent increment take effect if allowed

31. The Court of Appeal, the High Court and now the Environment and Land Court have at different occasions and times addressed themselves on this question. Justice Shah in the case of Tala Investments Ltd Supra held as follows;-

“The ratio decidendi of all the appeals is that the normal order for effective date would be that the date specified in the tenancy notice would be proper but the Tribunal has in proper circumstances discretion to alter the effective date and that such discretion must be exercised Judicially”

32. On the other hand, in Nakuru ELC Civil Appeal No. 68 of 2016 Supa Duka Nakuru Ltd - vs- Baringo United Co. Ltd, Justice Sila Munyao held as follows;-

“In my view, the reasons why the Tribunal was of the opinion that the rent needed to be backdated ought to have been given and failure to do that was an error on the part of the Tribunal”

21 “I hold the view that a cautious approach is needed before an order for back pay on rent is made, for the simple reason that this is a cost that was never budgeted for by the Tenant and was never taken into account by the Tenant when operating his business. It can be a huge burden which can lead to the crippling of one’s business especially because it now has to be paid in one lumpsum, covering a significant span of years”

25 “There need to be justifiable reason as to why rent should be back paid which was not given in this case. Both cited decisions leave the Tribunal with the discretion to determine when the assessed new rent ought to commence being paid. The only requirement is that the discretion must be exercised judicially and justification for the discretion given”

33. In this matter, we appreciate that the duration before there has been any rent increment has been prolonged. This is mainly from the long delayed conclusion of this case as explained.
34. From that reality, it is obvious that the Landlord has suffered loss of income and profit. On the other hand, if the determined rent is backdated to the 1/10/2019, it would be devastating to the tenants business and general commerce. In balancing the scales of justice therefore, we would direct that the new rents be payable effective the 1/1/2024.



Issue No C- Who should bear the Costs of suit

33. On costs, we are guided by the provisions of Section 27(1) of the *Civil Procedure Act* (Cap 27) and the decision in *Tasbir Singh Rai & 3 others -vs- Tarlochan Singh Rai & 4 others SC Petition No 4 of 2012*; (2014) CKLR where the Supreme Court held that costs follow the event and that the court has discretion in awarding such costs.
33. We do not have any reason to depart from that conventional wisdom and we award costs to the Landlord.
33. In the final analysis, we make the following orders;-
1. That the notices to alter the terms of the Tenancies herein which are all dated 30/7/2019 are upheld
 2. That the new rent payable on the respective premises to be effective the 1st of January, 2024.
 3. That the Landlord is awarded costs at Kshs 100,000/= to be shared equally among the Tenants

Those are the orders of the court.

RULING DATED , DELIVERED AND SIGNED AT NAIROBI ON THIS 10TH DAY OF SEPTEMBER 2024

in the presence of Miss Kamere holding brief for Ondieki for Tenant/Applicant and Miss Shabaana for the Landlord.

HON. NDEGWA WAHOME, MBS (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

AND

HON. JOYCE MURIGI - (MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

