



**Magnum Trimurti Limited v Hiriz (Tribunal Case E028 of 2023)
[2023] KEBPRT 1211 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1211 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E028 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 3, 2023**

BETWEEN

MAGNUM TRIMURTI LIMITED APPLICANT

AND

MUASIN SAID HIRIZ RESPONDENT

RULING

Introduction

1. The tenant's notice of motion dated 7.2.2023 seeks orders that pending the hearing and determination of the reference, the landlord be restrained from unlawfully harassing the tenant's employees, unlawfully evicting the tenant and unlawfully carrying out distress against the tenant. The tenant has also sought costs of the application.

The Tenant's depositions

2. The tenant's affidavit sworn by Mr. Nilkunth Jayantilal, a director of the tenant may be summarized as follows:-
 - a. That at all material times, the landlord has invoiced the tenant for the payment of rent at Kshs. 77,000/= per month and which the tenant has been faithfully paying.
 - b. That during the pendency of the COVID pandemic, the tenant's business was greatly affected resulting in an oral request by the tenant for review of the rent by half.
 - c. That on 15.10.2020, the tenant lost one of its directors further crippling the business.
 - d. That in November 2022, Mr. Kamlesh Pandya, one of the tenant's directors travelled to India where he has been the primary care giver of his mother who has been diagnosed with cancer.



- e. That the tenant has on numerous occasions requested the landlord to review the rent by lowering the same.
- f. That on 19.11.2022, the landlord issued a notice demanding the payment of a 10% increment to the rent commencing 1.12.2022 and on 23.11.2022, the landlord issued another demand notice alleging arrears of a 10% increment from 1.4.2021 to 30.6.2024.
- g. That consequently, the landlord issued the tenant with an invoice of Kshs. 154,000/= and has further threatened to terminate the lease agreement.
- h. That on 5.12.2022, the Respondent raised an invoice of Kshs. 84,700/= but when a cheque was forwarded for the payment of the December rent, the landlord declined to receive the same.
- i. That the tenant has remitted the full rental amount and the intended increment is an afterthought with the sole intention of evicting the tenant.

The Landlord's depositions

3. The landlord's replying affidavit sworn on 23.2.2023 may be summarized as follows:-
 - a. That on 5.4.2019, the parties herein entered into an agreement for a period of five (5) years and three months at an agreed monthly rent of Kshs. 77,000/= which rent would increase by 10% after every two years.
 - b. That the tenant executed the agreement voluntarily.
 - c. That it is true that the landlord wrote the letters dated 19.11.2022 and 23.11.2022, both addressed to the tenant.
 - d. That the tenant has failed to pay the 10% rent increment together with the rent for the months of December 2022, January and February 2023.
 - e. That the tenant has not been paying rent on time.
 - f. That the COVID 19 pandemic is now three years behind/past and the tenant cannot blame his failure to pay rent on COVID.
 - g. That the tenant being an incorporated entity, the death of its directors does not determine its existence.
 - h. That the tenancy being for a period of five years, and three months, the Tribunal has no jurisdiction to hear and determine this dispute.
 - i. That the tenant ought to be compelled to pay its rent as per the agreement.
4. The Reference filed by the tenant and dated 7.2.2023 made prayers to the effect that the landlord be prohibited and restrained from unlawfully evicting the tenant and from unlawfully distressing for rent.

Analysis and determination

5. The issues that arise in the application and reference filed by the parties are in my view the following:-
 - a. Whether the Tribunal has the jurisdiction to hear and determine this dispute.
 - b. Whether the Tribunal should interfere with the terms of the lease agreement dated 5.4.2019.
 - c. Whether the tenant is entitled to the orders of injunction sought against the landlord.



- d. What orders ought to be made in disposing of the Reference.

Issue A:

6. The landlord has contended that the lease agreement between the parties being for a period of five years and three months falls outside the ambit of the Tribunal. Clause 2 of the lease agreement between the parties provides as follows:-

“Either party is at liberty to terminate the lease upon giving two months written notice to the other party.”

7. Under Section 2(1) of [Cap 301](#), a controlled tenancy has been described as a tenancy of a shop, hotel or catering establishment;

a. Which has not been reduced into writing or

b. Which has been reduced into writing and which,

(i) is for a period not exceeding five years OR

(ii) contains provision for termination otherwise than for breach of covenant within five years from the commencement thereof OR

(iii)

The lease agreement between the parties herein therefore gives rise to a controlled tenancy as defined under Section 2(i)(b)(ii) of Cap 301 by dint of proviso 2 contained in the said lease agreement. On this issue, I do therefore find that the Tribunal has the jurisdiction to hear and determine this dispute.

Issue B

8. The tenant's contention is that it has been paying the rent of Kshs. 77,000/= as per the lease agreement entered into between the parties on 5.4.2019. The tenant seems to raise issues with the landlord's demand for the arrears based on a 10% increment every two years and terms the intended increment as an afterthought.

The lease agreement between the parties is for a period of five years and three months commencing on 1.4.2019 at an agreed monthly rent of Kshs. 77,000/="such rent to increase by 10% every two years subject however to the following terms and conditions."

It cannot therefore be true that the landlord's demand for the rent based on the 10% increment every two years is an afterthought as that increment formed a part of the covenant between the parties. It is now Trite Law that parties are bound by their agreements and further that courts cannot re-write agreements for parties. That being the case, the tenant is bound by the terms of the lease agreement it signed and the landlord is entitled to the payment of the rent and the 10% increment as per the lease agreement.

Issue C

9. The landlord has deponed in his replying affidavit that the tenant has failed to pay rent together with the 10% increment and specifically, that the tenant has not paid rent for the months of December 2022, January 2023 and February 2023. The tenant has not denied these averments by the landlord. A tenant who fails to pay rent falls in breach of a fundamental obligation on his part and is not entitled to the



equitable relief of an injunction. I have already found in the preceding paragraph that the landlord is entitled to the rent increment as per the lease agreement. I, in the circumstances decline to grant the tenant the orders of injunction sought.

Issue D

10. The Applicant/tenant's reference sought the same orders as the application. I have already found that the tenant is not entitled to the injunctive relief sought. That being the case, the application and the reference by the tenant lacks merit and the same are hereby dismissed with costs to the landlord.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER 2023.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

03. 11.2023

In the presence of Ms. Wangechi for the Landlord/Applicant

In the absence of the Tenant/Respondent and Counsel

