



**Babu v Southern Haulage (Cause E209 of 2022)**  
**[2023] KEBPRT 437 (KLR) (Civ) (19 July 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 437 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**CIVIL**  
**CAUSE E209 OF 2022**  
**A MUMA, MEMBER**  
**JULY 19, 2023**

**BETWEEN**

**FRANCIS BABU ..... TENANT**

**AND**

**SOUTHERN HAULAGE ..... LANDLORD**

**JUDGMENT**

**A. Parties and Their Representatives**

1. The applicant is the tenant of the suit premises in this matter, who occupies the rented space known as stalls No. 22 and 23, Towbah Exhibition, L.R. No. 209/24712.
2. The firm of Kimandu & Ndegwa Company Advocates represents the Applicant/Tenant in this matter.
3. The Respondent is the Landlord and owner of the suit premises L.R. No 209/24712 rented out to the tenant.
4. The firm of Naikuni Ngaah & Miencha Company Advocates represents the Applicant/Tenant in this matter.

**B. The Dispute Background**

5. On 25<sup>th</sup> February, 2022 the Applicant received a Notice to increase rent dated 21<sup>st</sup> February 2022 from the Respondent. The Notice indicated that the rent increment would be effective after days from the date of issuance. The Notice dated 21<sup>st</sup> February 2022 made reference to the Respondent's initial notice to increase rent dated 1<sup>st</sup> December 2021, which the Respondent claimed they had served upon the Applicant.



6. Subsequently on 3<sup>rd</sup> March 2022, the Applicant moved this Tribunal by way of reference and a notice of motion application under certificate of urgency dated 3<sup>rd</sup> March 2022 under section 12(4) of the landlords and Tenants (Shops, Hotel and Catering Establishment) Act CAP 301. The tenant sought among other orders, that pending the hearing and determination of the application that the tribunal order the landlord/respondent be restrained whether by himself, his agents or servants from dealing, interfering, alienating or otherwise disposing of the Tenant/Applicant's property.
7. On 7<sup>th</sup> March 2022, the Tribunal ordered inter alia, that:
  - a. The status quo as to the rental payments to be maintained pending the hearing of the application inter partes.
  - b. The Respondent be restrained from harassing and/or interfering in any manner with the tenant's quiet enjoyment of the suit premises.
8. On 25<sup>th</sup> May 2022, this Honourable Tribunal delivered a Ruling virtually dated same day in which the following Orders were granted:
  - a. The Notices dated 1<sup>st</sup> December 2021 and 21<sup>st</sup> December 2021 issued by the Landlord upon the Tenant were unlawful and invalid.
  - b. The Landlord at liberty to issue fresh 2 months' notice immediately should the tenant wish to oppose the same they are at liberty to file rent valuation reports in this reference in the next 30 days.
  - c. Landlord to file independent rent valuation report in response within 30 days from service.
  - d. The reference be fixed for hearing to determine the increment of rent within 90 days.
9. Subsequently, the tenant on 16<sup>th</sup> June 2022, filed a supplementary Affidavit together with a valuation report annexed to the said affidavit and marked as FB1.
10. In response, the Landlord on 4<sup>th</sup> July 2022 filed a Further Affidavit together with an independent Report and Rental Assessment annexed and marked as SHL-2.
11. The tenant on 24<sup>th</sup> November, 2022 further filed a supplementary Affidavit dated same day wherein he challenged the veracity of the report filed by the Landlord.
12. It is on the foregoing that I write this Ruling.

### **C. Tenant's Case**

13. It is the tenant's case that the Notice to increase rent by the Landlord is improper and irregular.
14. The Tenant further deponed that the Landlord is not entitled to the impugned rent increment.

### **D. Landlord's Case**

15. The landlord contends that the rent increment is proper and that done within the prescriptions and the requirement of law.

### **E. Jurisdiction**

16. The jurisdiction of this Tribunal is not in dispute.



## **F. Issues for Determination**

17. Is the landlord entitled to rent increment?

## **G. Analysis and Determination**

18. Cap 301 Section 9 on the Decision of Tribunal and effect thereof provides under subsection (1) that upon a reference a Tribunal may, after such inquiry as may be required by or under this Act, or as it deems necessary— (a) approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case.
19. Regulations 9 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966 provides for the factors to be considered when assessing rent increment. These are the factors that this Tribunal shall base in determining the impugned rent increment.
20. I am also guided by the decision of the Environment and Land Court in the case of Careenas Holdings t/a Gigitee Cyber vs. Nawab Mohammed Haji Mirdor [2021] eKLR, on this particular issue of rent increment in which the honourable judge while dispensing with the issue stated that there must be more to asserting rent rather simply taking an aggregate of valuations, not that there is anything wrong with it, if good reason is given. Matters such as the state and condition of the building, the facilities in the building, the age of the building and most importantly, what is paid by other tenants in the same or buildings within the vicinity.
21. I further note the decision of this Tribunal in the case of David Ngure Kienjoku vs. Engroup (K) International Limited [2021] eKLR, wherein the court while determination the likely issue stated in paragraph 9 of its Ruling that:
- “It is against this background that the Tribunal in invited to make a decision on this subject of rent increment. I have considered the valuation reports filed..... The rate of inflation keeps rising and affects the cost of living. The rent payable for premises is equally affected.... the rent payable should be commensurate to the value of the property as envisaged under form G.”
22. In this matter before me, both the tenant and the landlord filed their rent valuation reports in support of their different disposition and clearly indicating the rent comparable. The tenant’s rental comparable is as follows:

22.1 Extract of Tenant’s Summary of rental comparable dated 16<sup>th</sup> June 2022



Building	Location	Floor	Area (Sq.ft.)	Rent +VAT (KShs)	Service Charge (KShs)	Analysis (KShs/sq.ft.)
Superior Towers	Along Luthuli Avenue, a walking distance from the subject	Ground floor shop (third row shop)	50	20,000	Inclusive	400
Rware Business Centre	At the junction of Luthuli Avenue and Mfangamano street	Ground	70	30,000	Inclusive	428
Ambassador House	Tom Mboya Street, opposite Beba beba	Ground (Shop A4-Fourth Row Shop)	60	25,682	Inclusive	428
Sukuma Wiki House	Along River Road, Opposite Tobacco House	Ground	70	30,000	429	

23. The Landlord summary of the rental comparable for shops within the suit premise's environ is as below:

23.1 Extract of Landlord's Summary of rental comparable dated 31<sup>st</sup> march 2022



Shop Name	Rent (KShs.) per month	Area (Sq.ft)	Rent per sq.ft per month
Stall No. C12	30,000.00	43	697.67
Stall No. C5	25,000.00	27	925.93
Shop No. 2, Ngamini House	30,000.00	46	652.17

24. I note from the valuation reports and as indicated in the above extracts 22.1 & 23.1 that, tenants in premises within the vicinity and premises of sizes within the same range pay monthly rent which lies in the same range as that proposed by the Landlord in the impugned Notice.
25. It is in the mind of this Tribunal that the tenant has been and continues to occupy the suit premises for a period of over 10 years and that for this whole period, the total rent payable for both premises being stall No. 22 and No. 23 has been KShs. 45,000.00.
26. The Landlord intends to increase the rent for each stall by an amount equal to KShs. 3,500.00 and totaling to KShs. 7,000.00 for both premises.
27. As per the rent increment proposal by the Landlord, the total payable rent shall be KShs. 52,000.00 for both premises.
28. It is trite law that the owners of premises are in law allowed to propose and impose rent increment by the approval of this Tribunal. However, the increment must always be within the rates of the market value for it to be valid and enforceable.
29. Having carefully analyzed the reports of rent valuation filed by both parties and listened to the expert witnesses examination and cross examination I am persuaded to find that the rent increment proposal by the Landlord is proper within the rates of market value and due to the inflation factors as well as the factors as contained in Regulations 9 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966, the Landlord put into consideration with terrible exactness relevant factors while proposing the increase in rent.

#### **H. Orders**

30. I make the following Orders: -
  - a. The upshot is that the Tenant's Reference and Application dated 3rd March are hereby dismissed partially.
  - b. The Tenant shall pay rent at the rate of KShs. 52,000.00 per month being KShs. 26,000.00 for each stall i.e Stall No. 23 with effect from 1st August 2023 failure to which Landlord is at liberty to distress.
  - c. Each party shall bear their own costs.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 19TH DAY OF JULY 2023 IN THE ABSENCE OF THE PARTIES.**

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

