



Kuria Kaburu Arthyur t/a Tizedy Restaurant v Msalam (Tribunal Case E101 of 2021) [2023] KEBPRT 3 (KLR) (6 January 2023) (Judgment)

Neutral citation: [2023] KEBPRT 3 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E101 OF 2021
GAKUHI CHEGE, VICE CHAIR
JANUARY 6, 2023**

BETWEEN

KURIA KABURU ARTHYUR T/A TIZEDY RESTAURANT APPLICANT

AND

WARDA SAID ABUD MSALAM RESPONDENT

JUDGMENT

1. The landlord served a tenancy notice dated October 22, 2021 upon the tenant seeking to increase rent to Kshs 100,000/- from January 1, 2022.
2. The tenant being opposed to the increment filed a reference under section 6(1) of [cap 301](#) on November 18, 2021.
3. On July 7, 2022, both parties were directed to file their compliance documents within 21 days together with valuation reports and the matter was therefore fixed for mention on August 15, 2022.
4. Pursuant to the said directions, the tenant filed the following documents:-
 - i. Rental assessment report by Phina Valuers dated June 30, 2022.
 - ii. List of witnesses and witness statement of Clarice Wanjiru Joseph dated August 11, 2022.
 - iii. Written submissions dated November 9, 2022.
5. On the other hand, the respondent/landlord filed the following documents:-
 - i. Witness statement dated October 13, 2022 by Asma Said Abud.
 - ii. Valuation report by Kiliru & Co Valuers dated October 12, 2022.
 - iii. Submissions dated November 15, 2022.



6. I am required to determine the following issues:-
 - a. Whether the landlord's tenancy notice dated October 22, 2021 ought to be upheld or dismissed.
 - b. Who is liable to pay costs?.
7. According to Clarice Wanjiru Joseph, her husband Kuria Kaburu Arthyur Kairu entered into a lease agreement with Said Abud Awadh in the year 1998 at an agreed monthly rent of Kshs 15,000/-. The rent was later revised to Kshs 20,000/- after death of the original landlord.
8. According to the valuation report of the tenant prepared by Phina Valuers dated June 30, 2022, the rent for the suit premises ought to be assessed at Kshs 24,375/- per month based on two comparables as follows:-
 - i. Plot No 1713/XVII, off Jomo Kenyatta Avenue operated by Wayah Siso Wholesale & Retail measuring 30 square metres whose rent is Kshs 20,000/- per month with effect from January 1, 2021 which translates to Kshs 666 per square metre per month exclusive of services and VAT.
 - ii. Plot No 220/XVN off Jomo Kenyatta Avenue operated by Habib Store measuring 25 square metres whose rent is Kshs 15,000/- per month with effect from January 1, 2021 which translates to Kshs 600 per square metre per month exclusive of services and VAT.
9. The tenant's shop measures 26 square metres and the store measures 235 square metres with a current monthly rent of Kshs 20,000/-. The tenant's valuer recommends Kshs 650/- per square metre for the shop space and Kshs 235/- per square metre for the store space to arrive at Kshs 24,375/- rent per month exclusive of VAT and services.
10. According to Asma Said Abud, rent in respect of the suit premises was last reviewed in the year 2010 to the current rate of Kshs 20,000/- per month. Rent was to increase by Kshs 2500/- every year according to the tenancy agreement. As such, the tenant is said to be liable to pay Kshs 38,300/- per month in terms of the landlord's valuation report by Kiliru & Co Valuers dated October 12, 2022.
11. The said report has six (6) comparables as follows:-
 - i. Plot No 162/XVI Jomo Kenyatta Avenue operated by Mwembe Tayari Tyre Traders Ltd measuring 106.36 square metres for the shop and detached store measuring 134.2 square metres whose rent is Kshs 120,000/- per month since 2017 translating to Kshs 1,128.24 per square metre.
 - ii. Plot No 107/XV1-Jomo Kenyatta Avenue operated by Margaret W Ndungu measuring 29.58 square metres for the café and 13-10 square metres for the store whose rent is Kshs 30,000/- per month since 2016 translating to Kshs 830.33 per square metre.
 - iii. Plot No 222/XVI- Jomo Kenyatta Avenue operated by Citizen School Bookshop with a shop area of 26.66 square metres and store measuring 12.96 square metres whose rent is Kshs 23,000/- per month since 2018 which translates to 694.03 per square metre.
 - iv. Plot No 107/XVI – Jomo Kenyatta Avenue operated by Dream line measuring 28.39 per square metre for office area and store measuring 7.8 square metres at a monthly rent of Kshs 3500/- since 2018 which translates to 1,083.93 per square metre.



- v. Plot No 449/XVII- Jomo Kenyatta Avenue operated by Coastal Emporium Bookshop Ltd with a shop area of 41.28 square metres and store area of 6.5 square metres at a monthly rent of Kshs 36,300/- per month since 2021. This translates to Kshs 1,612/90 per square metre.
12. According to the landlord's valuer, all the comparables have similar frontages on Jomo Kenyatta Avenue and are located in close proximity to the suit premises with an average rent of Kshs 1027/- per square metre per month. This gives a valuation of Kshs 38,397/- per month made up as follows:-
- Shop- 24.6 square metres @ 1027/- Kshs 25,264/-.
 - Rear rooms 23.0 square metres @ 514/- Kshs 11,822/-.
 - Passage and WC 5.1 square metres at Kshs 257/- Kshs1,311/-.
- The valuer proposes Kshs 38,300/- per month in respect of the suit premises.
13. According to the tenant's submissions, the landlord has not justified the hefty rent increment proposed in the impugned tenancy notice in the sum of Kshs 100,000/- and was using the rental increment as a means to intimidate and coerce the tenant into a forced eviction.
14. On the other hand, the landlord's counsel submits that both parties entered into a tenancy agreement in 2010 and rent was agreed at Kshs 20,000/- per month and in 2015 rent was Kshs 25,000/- for two years after which it was reviewed so as to increase by Kshs 2500/- per month after every 2 years. As such from 2021, the monthly rent would have been Kshs 32,500/-. It is therefore contended that this court should adopt the valuation report by the landlord's valuers and order monthly rent to be fixed at Kshs 38,300/- with effect from December 1, 2021. The court is urged to consider the long period of tenancy, inflation and the fact that rent was to be increased every two years.
15. I have looked at all the documents on record and in particular the two valuation reports filed by both parties and find the landlord's valuer's report to be more relevant in that all the comparables used are within the same locality with the suit premises and have similar facilities including the store as opposed to the two (2) comparables used by the tenant's valuer which are both off Jomo Kenyatta Avenue. I have also looked at the tenancy agreements entered into initially by the two (2) parties and it is clear that rent was to be increased after every two years and as at 2021 therefore, rent ought to have been Kshs 35,000/-.
16. I shall therefore use my discretion to fix the rent payable for the suit premises at Kshs 35,000/- per month exclusive of VAT and service charge. The effective date will be January 1, 2023 as the tenant was justified to oppose the proposed increment to Kshs 100,000/- which I find to be overly exaggerated and unreasonable. The tenant is not to blame for the delay in hearing and determination of this reference.
17. Costs of every matter before this tribunal are in its discretion under section 12(1) (k) of [cap 301](#), laws of Kenya. As each party has succeeded in their respective positions in the instant dispute, I shall order that each meets own costs.
18. In conclusion, the final orders which commend to me in this reference under section 9(1) (a) of [cap 301](#), laws of Kenya are as follows:-
- The landlord's tenancy notice dated October 22, 2021 is approved with amendment of rent increment to Kshs 35,000/- per month with effect from January 1, 2023 exclusive of VAT and service charge.
 - Each party shall bear own costs of the reference.

It is so ordered.



RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 6TH DAY OF JANUARY, 2023.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:

Mrs. Omote for the Tenant

No appearance for the Landlord

