



Alwy & another v Engroup (K) International Limited & another (Tribunal Case 308 & 309 of 2020 (Consolidated)) [2024] KEBPRT 1225 (KLR) (27 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1225 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 308 & 309 OF 2020 (CONSOLIDATED)
A MUMA, MEMBER
AUGUST 27, 2024**

BETWEEN

MOHAMED ALWY 1ST APPLICANT

DAVID NGUREKIENJEKU 2ND APPLICANT

AND

ENGROUP (K) INTERNATIONAL LIMITED 1ST RESPONDENT

SURE AUCTIONEERS 2ND RESPONDENT

RULING

A. Parties And Their Representatives

1. The Applicants, (the “Tenants”) are the lawful tenants of shops on property known as Title Number MSA/Block XXII/186 situated along Archbishop Makarios Road on Mombasa Island within Mombasa County (the “suit premises”).
2. The Firm of Michael Ngure and Co. Advocates represents the Tenants in this matter.
3. The 1st Respondent, Engroup (K) International Limited is the registered proprietor of the suit premises and hence the Landlord (the “Landlord”).
4. The 2nd Respondent, Sure Auctioneers, have been instructed to distress for rent and hence are agents of the Landlord.
5. The firm of Addulrahman, Saad, & Associates Advocates represents the Landlord in this matter.

B. Background Of The Dispute

6. Vide a ruling delivered by Hon. P. May delivered a ruling on 10th September 2021 dismissing the Tenants’ References dated 15th December 2020 and Applications dated 21st May 2021 and validating



the Landlord's notice of alteration of terms seeking to increase rent from KShs. 10,000.00 to KShs. 50,000.00.

7. Dissatisfied with this decision, the Tenants filed an appeal at the Environment and Land Court in Civil Appeal E059 of 2021: Mohammed Alwly & David Ngure Kienjoku v. EN Group (K) International Limited where Naikuni J. allowed the appeal by setting aside the ruling of this Court dated 10th September 2021 and directing that this Court supervises the Parties' deliberations on a fair, reasonable and equitable rental increment based on the current market rate and that the matter be mentioned on 18th January 2024.
8. When the matter was mentioned on 17th July 2024, the Tenants' Advocate, Mr. Omboga, submitted that Naikuni J. advised that the rent payable be reviewed by an independent valuer. Further, he noted that Gazette Notice No. 89 had been published indicating the compulsory acquisition of the suit premises by Kenya National Highways Authority (KeNHA) and the National Land Commission (NLC).
9. The Court directed that the matter be mentioned on 26th July 2024 for further directions on valuation reports and for the Tenants' Advocate to give an update on the gazette notice for demolition of the suit premises as well as supply the Court with ELC decision in Civil Appeal No. E059 of 2024.
10. As in all mediation cases which this was for all purposes intended to be by the High Court Judge to find a middle ground parties seem to have stood firm on their grounds and unwilling to negotiate. In the circumstances the Tribunal guided by the High Court ruling instructed parties to file submissions on their respective valuation reports as parties again placed reliance on their old reports and were not willing to file fresh ones.
11. Subsequently, the Tenants filed their submissions dated 30th July 2024 and the Landlord filed its submissions on 1st August 2024.

C. Tenant's Case

12. The Tenants submit that while the parties are willing to deliberate on the rent payable, major changes affecting the landlord-tenant relationship were currently underway because the suit premises was to be demolished as per Gazette Notice Number 15192 and Gazette Number 89 dated 2nd December 2024 and 10th June 2024 respectively.

D. Landlords' Case

13. The Landlord submits that its valuation report dated 13th October 2021 has merit and that the rent proposed was based on comparable along Archbishop Makarios road and factored in inflation affecting the country in totality.
14. The Landlord further submits that since this matter was filed in Court, the Tenant has not made any rent payment and maliciously kept writing cheques in a different name other than that of the respondent, making it difficult for the Landlord to cash them out.
15. The Landlord therefore prays that the Tenant be ordered to pay the rent arrears from December 2020 when this suit began to date and that the cheques be written in the Landlord's name.

E. Jurisdiction

16. The Jurisdiction of this Honourable Tribunal is not contested by either party and therefore is not in dispute.



F. List For Issues For Determination

17. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties, it is therefore my respectful finding that the issues that falls for determination are:
 - a. What is the rent payable by the Tenants?
 - b. Whether the Landlord is entitled to the rent arrears?

G. Analysis And Determination

What is the rent payable by the Tenants

18. I note that the Environment and Land Court in setting aside the decision of the Tribunal directed that parties should be deliberate on a reasonable, fair and equitable amount of rent and advised that valuation be done by an independent valuer.
19. However, there has been developments of impending demolition of the suit premises in light to two gazette notices produced by the Tenants listing the suit premises as part of land to be compulsorily acquired by the Government for the construction of the Mombasa gate bridge project.
20. As rightly submitted by the Tenants, the aforementioned developments will ultimately have the effect of terminating the subsisting landlord tenant relationship in the near future, which may be by January 2025.
21. Be that as it may, these events do not negate the Tenant's obligation to pay rent. This Tribunal has a duty to ensure that justice is not only done but must be seen to be done. Besides, it is an implied condition of every lease that the tenant pays rent as and when it falls due, unless the Court directs otherwise.
22. It therefore would be improper to allow the Tenants to get away with the nonpayment of rent which the Landlord alleges is for the period since this suit commenced, to date.
23. The Tenants have not placed sufficient material before this Tribunal to demonstrate that they have been paying rent, even at the rate of KShs. 4,500.00 and KShs. 10,000.00, the prevailing rate before issuance of the notice by the Landlord to increase the rent despite being in occupation of the suit premises.
24. It is noteworthy that the valuation reports filed by the Parties herein indicate that the rate of KShs. 4,500.00 and KShs. 10,000.00 is significantly low. The Tenant's valuation report indicates that the rent payable as at 2021 is KShs. 24,000 while the Landlord's Report indicates a rate of KShs. 40,000.
25. Going by the Tenant's valuation report, I note that two years have lapsed and the rent payable must be increased to reflect the current value of the property. Further, I note that the Valuer has not taken into consideration the service charge as well as Value Added Tax at the rate of 16%.
26. In the circumstances, I am convinced that the rate of KShs. 24,000.00 ought to be increased by 10% after every two years to KShs. 26,400 per month and a service charge of KShs. 5,000.00. Additionally, VAT at a rate of 16% must be added thereto to amount to KShs. 36, 424. 00.
27. Accordingly, I find the amount payable as rent to be KShs. 36, 424.00 which ought to have been paid since August 2021.

H. Orders

28. In the upshot the following Orders shall abide;



- a. The Tenants to pay any outstanding rent arrears of KShs. 1,347,688.00 within 14 days of the date hereof, failure to which the Landlord shall be entitled to levy distress for rent and to take back vacant possession with the assistance of OCS Central police Station, Mombasa; and the same shall be payable in the landlords name Engroup International Limited
- b. Tenant to keep paying rent at the rate of KShs. 36,424.00 and when it falls due until the process of compulsory acquisition is complete;
- c. Each party to bear their own costs.

HON A. MUMA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 27TH DAY OF AUGUST 2024 IN THE PRESENCE OF FARHA H/B FOR SAAD FOR THE LANDLORD AND IN THE ABSENCE OF THE TENANT.

