



Gitobu Imanyara t/a Gitobu Imanyara & Co. Advocates v Value Zone Limited (Tribunal Case E303 of 2024) [2024] KEBPRT 1354 (KLR) (16 September 2024) (Judgment)

Neutral citation: [2024] KEBPRT 1354 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E303 OF 2024
A MUMA, MEMBER
SEPTEMBER 16, 2024**

BETWEEN

**GITOBU IMANYARA T/A GITOBU IMANYARA & CO.
ADVOCATES APPLICANT**

AND

VALUE ZONE LIMITED RESPONDENT

JUDGMENT

A. Parties & Their Representatives

1. The Applicant, Gitobu Imanyara (hereinafter the “tenant”), is the tenant occupying the suit premises, 2nd Floor of Fatima Court, erected on Land Reference No. 1/822 located along Argwings Kodhek Road within Nairobi County, the subject matter of the present suit.
2. The firm of M/S Gituma & Otieno Company Advocates represents the tenant in these proceedings.
3. The Respondent, Value Zone, (hereinafter “the landlord”) is the Landlord and manager of the suit premises.
4. The firm of M/S T.K Kariba Mbabu & Co. Advocates represents the Landlord in this matter.

B. Dispute Background

5. The Tenant moved this Tribunal vide a Reference dated 29th February 2024 seeking this Tribunal’s intervention in the reassessment of rent on the grounds that the Landlord has failed to carry out repairs on the suit premises.
6. This Honorable Tribunal issued Orders directing the Tenant to serve the said Reference for directions on 18th March 2024 and thereafter file an affidavit of service.



7. On 17th April 2024, the matter was dismissed for want of prosecution. Consequently, the Tenant filed an Application dated 18th April 2024 seeking to stay, review and set aside the dismissal Orders of the Court dated 17th April 2024 which the Court allowed on 30th April 2024.
8. On 29th May 2024, the Landlord failed to appear despite having been in Court when the date was fixed. As such, the Court allowed the Tenant's Reference and directed that the Landlord carries out the repairs with immediate effect failure to which the Tenant will be allowed to undertake the repairs and offset the same from rent.
9. Upon learning of this development, the Landlord filed an Application to stay, review and set aside the Orders of the Court dated 30th May 2024. The Court issued interim Orders staying the Orders dated 30th May 2024 and that the Landlord serves the said Application for interpartes hearing on 12th June 2024.
10. On 12th June 2024, the Court allowed the Landlord's application dated 30th May 2024 and directed that the Landlord files a response to the Tenant's Reference. Further, the Court directed that the matter be heard on 11th July 2024, which date was taken by consent.
11. However, the matter was dismissed on 11th July 2024 for want of prosecution. Subsequently, the Tenant filed an application for review dated 16th July 2024, which the Court directed be fixed for interpartes hearing on 25th July 2024.
12. On 25th July 2024, the Court discharged its Orders dated 11th July 2024 directing that the Reference proceed to full hearing and that the parties to file submissions.
13. Subsequently, the Tenant filed his submissions dated 9th July 2024 while the Landlord filed his submissions on 6th August 2024.
14. It is the Tenant's Reference dated 29th February 2024 that is the subject of this Judgement.

C. Claim And Defence

15. On the one hand, it is the Tenant's case that the rent payable on the suit premises should be reduced owing to the dilapidated state of the suit premises. Further, the Tenant claims that despite issuing the Landlord with a notice, the Landlord has failed to undertake repairs thereby making the suit premises inhabitable.
16. On the other hand, in its replying affidavit dated 28th June 2024, the Landlord avers that the building has been in place for over 30 years and that the same is in a fairly good condition. The Landlord further avers that the repairs demanded by the Tenant are external and capital extensive and cannot be undertaken at the whims of the Tenant.
17. However, the Landlord admits that there are leaking water pipes that need to be repaired and the walls need to be painted and has indicated that plans to undertake the same are underway.

D. Issues For Determination

18. I have carefully analyzed all the pleadings filed and the relevant evidence adduced before honorable Court. It is my considered opinion that the sole issue that falls for determination is:

Whether this Court should reassess the rent.



E. Analysis Of The Law

Whether this Court should reassess the rent.

19. I note that the Tenant's case is that the suit premises is in a dilapidated state with chipped away stair cases, leaking pipes and a general drainage problem that causes water logging whenever it rains, walls filled with live moss, parking space with potholes and a pathway with loose stones.
20. The Tenant argues that the suit premises needs to be repaired as the above mentioned issues pose a health and occupational risk to the tenants. Further, that the potholes in the parking lot may cause damage to the vehicles parked.
21. To prove his case, the Tenant has attached photos demonstrating the said issues and the need for repair, to make the premises habitable to all tenants.
22. On the other hand, the Landlord indicates that given the age of the building, the premises is in a habitable condition and has produced photos to indicate the same. However, the Landlord admits that there is a drainage problem and that plans are underway to rectify the same as well as paint the premises.
23. I have carefully perused the said photographs produced by both parties and note that same are not clear. Further, I note that the photos are conflicting. For instance, the photo of the live Kei Apple fence produced by the Tenant appears to be totally unkempt and unmaintained while the one produced by the Landlord shows a well-trimmed live fence.
24. Further, the parties herein have not produced any valuation reports to enable this Tribunal reassess the rent payable in line with the factors listed in Form G, including the original cost of construction of the building; the age of the building; the market value of the land on which the premises are built; the improvements and cost of such improvements; amenities or services provided by the landlord; the rent at which the premises were let for the past three years.
25. In the circumstances and without further evidence, this Tribunal is not in a position to either reassess the rent payable or determine the true status of the suit premises with regards to the repairs that need to be undertaken.
26. As such, this Tribunal shall rely on the Landlord's admission on the issues of drainage and painting of the walls, which it has clearly stated that it is planning to undertake.
27. This Tribunal is therefore inclined to afford the Landlord a period within which to repair the leaking water pipes and address the drainage issue as well as paint the suit premises to make the same habitable.
28. Thereafter, there shall be a site inspection to ascertain whether the Landlord's compliance and to determine whether further repairs need to be carried out.

F. Determination

29. The upshot is that the Tenant's Reference dated 29th February 2024 is hereby allowed in the following terms:
 - a. The Landlord shall undertake repairs of the leaking water pipes and the general drainage issue and paint the walls within 60 days from the date herein.
 - b. A site inspection shall be carried out to ensure compliance and to ascertain the status of the suit premises. Thereafter, an inspection report to be filed before this Court.



- c. The matter be mentioned for further directions on 21st November 2024.
- d. Tenant to keep paying rent at the agreed rate without any adjustments as and when it falls due.
- e. Each party to bear its own costs.

HON A. MUMA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. A. MUMA THIS 16TH DAY OF SEPTEMBER 2024

in the presence of Mbaabu for the Landlord and Otieno for the Tenant.

HON A. MUMA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

