



**Nyaga v Yawa (Tribunal Case 78 of 2021)**  
**[2023] KEBPRT 698 (KLR) (1 December 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 698 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE 78 OF 2021**  
**GAKUHI CHEGE, VICE CHAIR**  
**DECEMBER 1, 2023**

**BETWEEN**

**KIMATHI NYAGA ..... TENANT**

**AND**

**MAKUPE YAWA ..... LANDLORD**

**JUDGMENT**

1. The Landlord served the tenant with a notice to increase rent from Kshs.5000/- to Kshs.15,000/- per month with effect from 1<sup>st</sup> May 2021 on the grounds that the current rent was minimal and that the premises can fetch the proposed new rent in an open market. The notice is dated 25<sup>th</sup> February 2021.
2. The landlord filed a valuation report dated 8<sup>th</sup> October 2021 by Wesco Property Consultants in respect of the suit premises being plot no. 177, Kilifi Town which is used as a timber yard. The report returned a figure of Kshs.30,000/- at a rate of Kshs.500/- per metre square using two comparables being a hardware shop known as Taifa Mabati with an area of 400m<sup>2</sup> with a monthly rent of Kshs.40,000/- which comes to Kshs.1,000/- per metre square.
3. The second comparable is Ex-choma Zone Bar & Restaurant whose area and rent is not given. According to the landlord's valuer, the tenant's workshop measures 1174.8 metre square with the present rent being Kshs.5000/- per month. This translates to Kshs.4.26 per metre square.
4. On the other hand, the tenant filed a report by Phina Valuers dated 27<sup>th</sup> September 2022 which returned a monthly rent of Kshs.6660/- for an area of 30.0 metre square at Kshs.222/- per square metre exclusive of services and VAT.
5. The tenant's valuer uses three (3) comparables with the first one being a shop opposite the subject premises next to Mtandao Enterprises Ltd with an area of 36.0 metres square with its current rent being 6,000/- per month with effect from 1/1/2021 whose analysis is Kshs.166/- per square metre per month.



6. The second comparable is a shop near the subject premises run by Glory Chemist and Cosmetics measuring 15.0 metre square with a monthly rent of Kshs.5,000/- at Kshs.333.00 per square metre per month exclusive of services and VAT.
7. The third comparable is a shop owned by Denis Yaa Baya measuring 21.0 metre square with a rent of Kshs.7,000/- per month with effect from 1/1/2021 at Kshs.333/- per square metre per month exclusive of services and VAT.
8. According to the tenant's valuer, the said comparables give analysis of Kshs.277/- per metre square per month on average devoid of service charge and VAT.
9. On 18<sup>th</sup> October 2022, this Tribunal ordered M/S Phina valuers and Wesco Property Consultants to visit the suit premises jointly to ascertain the area occupied and/or used by the tenant and file a report within Thirty (30) days thereof.
10. The tenant's valuer Phina Valuers in a report dated 12<sup>th</sup> April 2023 filed what is headed joint rental assessment of commercial space on ground floor of plot No. 177 Kilifi, Charo Wamae Road Kibaoni. At page 3 of the said report which is signed by both valuers, the Landlord's assessment of the workshop shows an area of 1774 square metres at Kshs.500/- per square metre to make Kshs.37,000 per month.
11. The tenant's rent assessment is shown to be 30 square metres @ Kshs.222/- per square metre to arrive at Kshs.6660/- per month. The measurements given in the said report is a replication of what the tenant's earlier report had given while the landlord's measurements changed to 1774 square metres from 1174 square metres contained in the earlier report.
12. I have looked at the photographs attached to the joint valuation report which makes it clear that the tenant has built an extension of the workshop and therefore occupies more than the 30 square metres given in the report.
13. The two valuers could not agree on the area occupied by the tenant but it is clear from the tenant's report that it only considered the main shop and not the extension. The area occupied by the extension cannot be leased out to any other tenant and it is therefore reasonable to approve the proposed increment of rent from Kshs.5000/- to Kshs.30,000/- as per the notice given that the said valuation was done in 2021 and the rate of inflation has affected the Kenyan currency in a negative manner.
14. I shall direct that the new rate of Kshs.30,000/- per month takes effect from 1<sup>st</sup> day of January 2024 to enable the tenant to adjust in line with Section 9(1) of Cap. 301, Laws of Kenya.
15. I shall order each party to meet own costs of the case in exercise of my discretion under Section 12(1) (k) of Cap. 301, Laws of Kenya as both could not agree on the area occupied which led to the case taking longer than it ought to have taken.
16. In conclusion, the following orders commend to me:-
  - a. The landlord's notice to increase rent dated 25<sup>th</sup> February 2021 is hereby approved with the effective date thereof being changed to 1<sup>st</sup> day of January 2024.
  - b. Each party shall bear own costs of the case.

It is so ordered.

**JUDGMENT DATED, SIGNED & VIRTUALLY DELIVERED THIS 1<sup>ST</sup> DAY OF DECEMBER 2023.**

**HON. GAKUHI CHEGE**



**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

Judgment delivered in the presence of:-

Mwawasaa for the Tenant

Landlod present in person

Mwawasaa: I pray for 30 days stay pending appeal or review of the judgement.

Landlord: I have an objection to stay.

Order: stay of execution for 30 days granted.

