



**Kiarie v Karomo (Tribunal Case E004 of 2021)  
[2023] KEBPRT 703 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 703 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E004 OF 2021  
GAKUHI CHEGE, MEMBER  
NOVEMBER 24, 2023**

**BETWEEN**

**STEPHEN JULIUS KIARIE ..... TENANT**

**AND**

**KINUTHIA KAROMO ..... LANDLORD**

**JUDGMENT**

1. The landlord and the tenant herein entered into a tenancy agreement which is undated but expressed to run from November 1, 2016 to December 31, 2021 in respect of a piece of land known as Plot No. 5620 at Ruaka in Kiambu County.
2. The purpose of the lease was to run a car wash and container. At clause 4 of the tenancy agreement, it was indicated that construction was underway and that any other business to be set up required all receipts to be kept for future reference.
3. The agreement expired by effluxion of time on December 31, 2021 during the pendency of this suit which was instituted on May 18, 2021 by the tenant who successfully moved the Tribunal to issue injunction orders against the landlord to stop interference with the tenancy. The said orders were granted ex-parte on May 19, 2021 and the same were subsequently confirmed by a ruling delivered on August 23, 2021.
4. According to the replying affidavit filed by the landlord herein and sworn on May 31, 2021, the tenant was in rent arrears of Kshs.240,000/- as at December 31, 2020 as deposed at paragraph 12, the amount changes to Kshs.645,000/-.
5. The arrears claimed by the landlord were disputed by the tenant through his further affidavit sworn on 10<sup>th</sup> June 2021. The tenant deposed that the landlord had not demanded the same previously.



6. Through a ruling delivered on August 23, 2021, this Tribunal directed both parties to file and exchange statements of rent account for the period November 1, 2016 to December 31, 2020 together with payment records for a determination by the Tribunal on the rent due if not agreed upon between them.
7. The tenant filed yet another application wherein he inter-alia sought for an order to restrain the landlord from demanding and/or directly collecting monthly rent from the subtenants operating business in the suit property or in any other way interfering with his quiet possession and enjoyment of the suit premises.
8. The tenant also sought for inspection of the suit premises by a joint valuer appointed by both parties and a report filed as the parties had been unable to agree on the value of the developments erected on the suit premises.
9. The landlord subsequently raised a preliminary objection to the said application questioning this Tribunal's jurisdiction to determine the issue of compensation. In a ruling delivered on March 17, 2023, the objection was dismissed and the claim for compensation was found to be properly before the court.
10. On June 8, 2023, both counsels were directed to visit the suit premises and agree on the specific improvements to be removed by the tenant from the suit premises within 14 days thereof. The matter was therefore set down for mention on July 20, 2023.
11. On July 20, 2023, the matter came up for mention and after listening to arguments from both counsels, this Tribunal directed that the matter would proceed for ruling on the outstanding issues after submissions by them.
12. Both counsels filed submissions on the issues of compensation and rent arrears on September 8, 2023 and October 9, 2023 respectively. I shall adopt the two issues as the matters for determination in this suit in addition to the issue as to who is liable to pay costs of the suit.
13. I have taken note that the tenant filed a valuation report by John N. Muchina dated September 9, 2022. The author is expressed to be a Registered quantity surveyor and Building economist who returned a valuation of Kshs.3,934, 140/- in respect of the developments erected on the suit premises.
14. The landlord did not file any report and in his counsels submissions, the tenant is at liberty to remove the improvements erected on the suit premises as there was no consensus. It is submitted that the tenant cannot be allowed to demolish the structures before the rent arrears of Kshs645,000/- is paid.
15. On the other hand, the tenant's counsel submits that the landlord was raising the issue of rent arrears as a delaying tactic. She submits that the landlord has been utilizing the tenant's development, since January 2022 and collecting rent from the various subtenants at the expense of the tenant.
16. It is further submitted that the tenant filed a valuation report which was conducted in the presence of and in conjunction with the landlord's quantity surveyor which report has never been contested. It is thus submitted that the tenant is entitled to be compensated in the sum of Kshs.3,934,110/- for the improvements done on the suit premises which was being utilized by the landlord.



17. This Tribunal's power to award compensation for improvements is donated by Section 12 (1) (i) of Cap. 301, Laws of Kenya as follows:-
- “(i) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill and improvements carried out by the tenant with the landlord's consent”.
18. There is no doubt that the developments subject matter of this case were carried out with the consent of the landlord. It is also not in dispute that the tenancy agreement herein came to an end by effluxion of time on 31<sup>st</sup> December 2021 and that the landlord took over the subtenants and has been in use of the suit premises to the exclusion of the tenant.
19. It is also clear from the materials placed on record that the landlord objected to the removal of the improvements by the tenant claiming that he was in arrears of Kshs.1,645,000/-. Both counsels agreed to a joint valuation and despite the landlord's valuer participating in the valuation exercise, the valuation report was only signed by the tenant's valuer.
20. There is no other report filed in this matter to contradict or controvert the value of Kshs3,934,140/- given in the tenant's valuer's report dated September 19, 2022. In absence of any other such report, this Tribunal shall adopt the said report as reflective of the value of improvements erected on the suit premises and proceed to award the said amount of Kshs.3,934,140/- to the tenant given that there are subtenants who were taken over by the landlord who are in occupation of the suit premises making it impossible for removal of the improvements. The landlord is said to be running the car wash and cannot have it both ways.
21. In regard to rent arrears, I have not seen convincing evidence that the tenant had fully paid his rent to the landlord as the tenant did not comply with directions to file and exchange statement of rent account for the period November 1, 2016 to December 31, 2020 as directed *vide* a ruling delivered on August 23, 2021. I shall therefore award the said amount to the landlord which shall be offset against the compensation award to the tenant for improvements effected on the suit premises.
22. In regard to costs, the same are at the Tribunal's discretion but always follow the event under Section 12(1) (k) of Cap. 301, Laws of Kenya. Both parties have succeeded in their respective claims and I shall direct that each bears own costs of the suit.
23. In conclusion, the following final orders commend to me in this case:-
- a. The landlord shall pay Kshs.3,934,140/- to the tenant as compensation for improvements erected on L.R No. 5620, Ruaka, Kiambu County by the latter.
  - b. The tenant shall pay a sum of Kshs.640,000/- being rent arrears owing to the landlord which shall be offset against the amount of compensation awarded to him leaving the balance at Kshs.3,294,140/- payable by the latter.
  - c. Each party shall meet own costs of the suit.

It is so ordered.

**JUDGMENT DATED, SIGNED & VIRTUALLY DELIVERED THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023.**

**HON. GAKUHI CHEGE**

**FOR: CHAIRPERSON**



## **BUSINESS PREMISES REN TRIBUNAL**

