



**Said v Sulum (Tribunal Case E035 of 2022)**  
**[2023] KEBPRT 1343 (KLR) (5 October 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1343 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E035 OF 2022**  
**GAKUHI CHEGE, CHAIR**  
**OCTOBER 5, 2023**

**BETWEEN**

**IMRAN FAKI SAID ..... TENANT**

**AND**

**SWALEH ABDUN SULUM ..... LANDLORD**

**JUDGMENT**

1. The Landlord served a tenancy notice under Section 4(2) of [Cap 301](#), Laws of Kenya upon the tenant seeking to increase rent from Kshs. 35,000/= to Kshs. 300,000/=. According to the landlord, the current rent of Kshs. 35,000/- is minimal and the premises can fetch the proposed rent of Kshs. 300,000/= in an open market. The notice was expressed to take effect on 1<sup>st</sup> April 2022.
2. On 26<sup>th</sup> October 2022, the landlord was granted leave to amend the notice with a view to read Kshs. 79,000/= from Kshs. 300,000/= in terms of the increment amount from Kshs. 35,000/=.
3. The parties filed their respective valuation reports with the landlord's report by Wesco Property Consultants dated 10<sup>th</sup> May 2022 recommending a figure of Kshs. 79,000/= exclusive of VAT and other taxes. The tenant's report is dated 19<sup>th</sup> May 2022 by Elite Africa Valuers Limited which returned a valuation of Kshs. 42,307/= as monthly rent exclusive of VAT and service charges.
4. The matter proceeded by way of viva voce evidence with the two firms of valuers sending their representatives to give evidence before the Tribunal. The landlord and the tenant also testified.
5. The landlord produced the amended rent increment notice pursuant to leave granted by this Tribunal seeking to increase rent from Kshs. 35,000/= to Kshs. 79,000/=. He stated that the tenant had been paying rent of Kshs. 35,000/= since 2016. The landlord testified that he renovated the toilets serving the suit premises. He also stated that the tenant increased the used space by demolishing the stair case of the shop. The landlord further stated that he had repaired the shop canopy.



6. According to the landlord, the market rent rates had improved and that the area was strategic. He relied on the second valuation in proposing an increment of Kshs. 79,000/=.
7. According to the landlord, the suit premises was connected with water and electricity and there was a tarmac road passing by and that other shops in the area charge rent of between Kshs. 50,000/= to Kshs. 100,000/= depending on size.
8. The landlord's valuer; one Herman Kinunira Kiriti stated that he did a valuation on 10<sup>th</sup> January 2022 and recommended a rent of Kshs. 300,000/= which was a typing error. As a result, a second report was prepared on 10<sup>th</sup> May 2022 which recommended a monthly rent of Kshs. 79,000/=.
9. On cross examination, the witness stated that he used comparable and analysis to arrive at the recommended rent of Kshs. 79,000/=. He stated that all the comparables were from new tenants. He also confirmed that the tenant had made improvements on the stair case to increase the area of the shop and also put a mezzanine floor in the premises. He used comparables opposite the suit premises and their sizes were move less the same.
10. On the other hand, the tenant stated that he became a tenant in 2016 paying a monthly rent of Kshs. 25,000/=. He currently pays Kshs. 35,000/=. According to him, the notice to increase rent was not reasonable as the landlord had not made any improvements to the suit premises.
11. The tenant testified that he is the one who put tiles, shelves, gate, ceiling and improved drainage of the shop. He also repaints the shop every year including the exterior. He had put a timber mezzanine floor at his own costs. He therefore wants the rent to remain at Kshs. 35,000/=. According to him, the comparables are from a new building on the opposite site of the road.
12. In cross examination, the tenant stated that the suit premises was in Mombasa Island and abuts the main tarmac road. He had been in the premises for 7 years. He had no receipts on the amount used for renovations by him. He said that he has a neighbor who pays Kshs. 20,000/= in the same building and his shop was bigger than the tenant's. The tenant admitted that his valuer recommended an increment of Kshs. 7,000/= which he was not willing to pay.
13. The tenant's valuer was one Ephantus Waweru Rugethe who testified that the suit premises measure 29 square meters. He analyzed 9 comparables within the area and came up with an average of Kshs. 1,458/= per meter square. He came up with a monthly rent of Kshs. 42,307/= exclusive of VAT and service charge.
14. On cross examination, the witness confirmed that the suit premises was within the Central Business District of Mombasa city. The shop is on ground floor and that all the comparables used were on ground floor but none was on the same plot. However, he admitted that comparables Nos. 1, 2 and 9 are bigger than the tenant's premises. Comparable No. 4 was quite small while comparables Nos. 6, 7 and 8 are relatively smaller in size.
15. Comparable No. 3 and 5 are almost similar to the suit premises and that all the comparables had no mezzanine floor according to the tenant's valuer. The premises is in a busy area.
16. Both parties filed submissions which I shall consider together with the following issues for determination:-
  - a. Whether the landlord's amended tenancy notice dated 26<sup>th</sup> October 2022 ought to be approved or dismissed.
  - b. Who is liable to pay costs of the reference?



17. The landlord's notice proposes to increase rent from Kshs. 35,000/= to Kshs. 79,000/=. I have looked at the said amended notice and it complies with Section 4(2) of [Cap 301](#), Laws of Kenya. The same is in the prescribed form and seeks an increment of rent on the basis that the suit premises are likely to fetch the proposed rent of Kshs. 79,000/= per month in the open market.
18. The landlord produced a valuation report by Wesco Property Consultants dated 10<sup>th</sup> May 2022 which has 4 comparables to wit:-
  - i. Plot No. MSA Block *XVII* – 489/RAHA LEO STREET whose tenant is Abitel Enterprises measuring 54.9 square meters and fetching a monthly rent of Kshs. 80,000/= since January 2022 whose analysis is Kshs. 1,457/= per square meter.
  - ii. Plot No. MSA Block *CVII*- 489/RAHA LEO STREET whose tenant is Good Deal Gift Shop measuring 25 square meters with current rent being Kshs. 80,000/= per month since January 2022 whose analysis is Kshs. 3,200 per square meter.
  - iii. Plot No. MSA Block *XVII* 347/RAHA LEO STREET whose tenant is DUJA LIGHTS SHOP with an area of 15.0 square meters and fetching a monthly rent of Kshs. 45,000/= per month since January 2022 whose analysis is Kshs. 3,000/= per square meter.
  - iv. Plot No. MBS Block *XVII* – 306/RAHA LEO STREET whose tenant is GLO ELECTRONICS with an area of 25.0 square meters fetching a monthly rent of Kshs. 40,000/= per month since January 2022 whose analysis is Kshs. 1,600/= per square meter.
19. According to the report, all the comparables are on the same street and their average monthly rent is Kshs. 2,314/= per square meter. The suit premises is on RAHA LEO STREET, Mombasa Island in Mombasa County.
20. On the other hand, the tenant's valuer's report contains 9 comparables as follows:-
  - i. Plot No. Mombasa Block *XVIII*/232 whose tenant is Al Basheck Electronic on Ground floor with a lettable space of 105 square meters whose monthly rent is Kshs. 80,000/= which translates to Kshs. 762/= per square meter per month with a monthly rent of Kshs. 22,098/=.
  - ii. Plot No. Mombasa Block *XVIII*/233 whose tenant is Universal Electronics Ground Floor with a lettable space of 54 square meters whose monthly rent is Kshs. 35,000/= which translates to Kshs. 648/= per square meter per month with a monthly rent of Kshs. 18,792/= per month.
  - iii. Plot No. Mombasa Block *XVIII*/504 whose tenant is Al-Bushra Electronics on Ground floor with a lettable space of 27 square meters which translates to Kshs. 1,296/= per square meter per month with a monthly rent of Kshs. 37,584/= per month.
  - iv. Plot No. Mombasa Block *XVIII*/232 whose tenant is Kanani Miraa shop located along George Morara street 20 meters off Jomo Kenyatta Avenue with a lettable area of 6 square meters and monthly rent of Kshs. 10,000/= which translates to Kshs. 1,667/= per square meter per month with a monthly rent of Kshs. 48,343/= per month.
  - v. Plot No. Mombasa Block *XVIII*/276 whose tenant is Glanjoes Hardware at the junction of hospital and Turkana roads within Mwembe Tayari area with a lettable space of 31 square meters and attracting a monthly rent of Kshs. 45,000/= per month whose analysis is Kshs. 1,452/= with the monthly rent being Kshs. 42,108/= per month.
  - vi. Plot No. Mombasa Block *XXI*/252 being a chemist/mpesa shop premises at the junction of hospital and Turkana roads and adjacent to A One supermarket to the West within Mwembe



- Tayari area with a lettable space of 20 square meters and a rent of Kshs. 40,000/= whose analysis gives Kshs. 1,975/= per square meter per month which translates to Kshs. 57,275/= per month.
- vii. Plot No. Mombasa Block XXI/252 hosting Trends Boutique at the junction of hospital and Turkana roads adjacent to A One supermarket to the West within Mwembe Tayari ares with a lettable area of 18 square meters and a rent of Kshs. 35,000/= per month whose analysis is Kshs. 1,944/= per square meter per month which translates to Kshs. 56,376/= per month.
  - viii. Plot No. Mombasa XVIII/373 hosted at a hardware shop along Raha Leo street with a lettable space of 21 square meters whose rent is Kshs. 40,000/= per month which translates to Kshs. 1,905/= per square meter per month whose analysis is Kshs. 55,245/= per month.
  - ix. Plot No. Mombasa Block XVIII/347 hosting Hamadi Electronics on ground floor with a lettable area of 54 square meters per month which gives analysis of Kshs. 42,949/= per month.
21. The valuation report recommends a monthly rent of Kshs. 42,307/= per month for the suit premises whose lettable space is 29 square meters approximately.
  22. I have looked at both reports and noted that the landlord's valuation report has only 4 comparables all of which are on the same street with the suit premises. The tenant's valuation report has only one property comparable No. (viii) on the same street with the suit premises but has a lettable space of 21 square meters.
  23. The landlord's counsel submits that the comparables used by the tenant's valuer has comparables Nos. 1, 2 and 9 which are very big in size and comparables No. 4, 6, 7 and 8 are very small and thus not relevant. They are also far from the suit premises. Comparables Nos. 3 and 5 are also not of the same size as they lack mezzanine floor like the suit premises.
  24. It is submitted that the landlord's comparables are within the same vicinity and the lettable areas are more or less the same. Comparable No. 4 is next to the suit premises and as such the amount proposed is reasonable.
  25. On the other hand, the tenant's counsel submits that the landlord has not shown any increase in land rates or rent. He did not show that he rebuild, reconstructed or redecorated the premises to warrant any increase. The tenant pays all the outgoings and there was no basis for an increase.
  26. The tenant submits that the same valuer of the landlord who proposed Kshs. 300,000/= is the one who revised to Kshs. 79,000/= which makes it unbelievable. He submits that the landlord's valuer did not annex his professional qualifications or practicing certificate. However, the tenant's counsel had not served notice to produce the same before the hearing date as required under the Evidence Act.
  27. However, I tend to believe the landlord's valuer as he relied on premises which are on the same locality and street with the suit premises and I shall exercise my discretion to set the rent for the suit premises at Kshs. 60,000/= exclusive of VAT and service charge down from the recommended figure of Kshs. 79,000/= noting that the market rate has risen for the last over 7 years since the tenant occupied the premises. I shall make the effective date of increment to be 1<sup>st</sup> January 2023 instead of 1<sup>st</sup> April 2022 in line with Section 9(1)(a) of Cap 301, Laws of Kenya. The tenant shall pay any arrears occasioned by the effective date of increment within a period of three (3) months from the date hereof.
  28. As both parties have partially succeeded in their respective positions on the tenancy notice, I shall exercise my discretion to order each party to meet own costs of the case under Section 12(1) (K) of Cap 301, Laws of Kenya.
  29. In conclusion, the final orders which commend to me in this matter are:-



- a. The landlord's amended tenancy notice dated 26<sup>th</sup> October 2022 is approved with amendment to the effect that the tenant's rent is increased from Kshs. 35,000/= to Kshs. 60,000/= with effect from 1<sup>st</sup> January 2023.
- b. The tenant shall pay the rent arrears occasioned by the increment within a period of three (3) months from the date hereof.
- c. Each party shall meet own costs of the reference.

It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF OCTOBER 2023.**

**HON. GAKUHI CHEGE - FOR: CHAIRPERSON**

**5.10.2023**

Judgment delivered in the presence of Mr. Omwenga for the landlord and Ms. Wambua for the tenant

