



**Geca Office Supplies Ltd v Mukta Shah of the Estate of Late Shantabai G Shah (Tribunal Case E865 of 2022) [2023] KEBPRT 231 (KLR) (Civ) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 231 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E865 OF 2022  
A MUMA, VICE CHAIR  
APRIL 13, 2023**

**BETWEEN**

**GECA OFFICE SUPPLIES LTD ..... TENANT**

**AND**

**MUKTA SHAH OF THE ESTATE OF LATE SHANTABAI G SHAH . LANDLORD**

**RULING**

**A. Parties and their representatives**

1. The Tenant/Applicant (hereinafter “the tenant”) Geca Office Supplies Ltd is the tenant and has rented space on the premises known as LR 209/136/106, Kilome Road. (hereinafter known as the ‘suit premises’).
2. The Firm of Njeru, Nyaga & Company Advocates represents the tenant
3. The Landlord/Respondent (hereinafter “the landlord”) has rented out the space for the business in the suit premises to the tenant.
4. The Firm of B. Kimathi Advocates represents the landlord.

**B. Background of the dispute**

5. The tenant filed a Notice of Motion application dated 5<sup>th</sup> October 2022 under Certificate of Urgency claiming inter alia, that the Landlord intended to unlawfully evict it from the suit premises.
6. The Estate of the landlord filed two Replying Affidavits both dated 18<sup>th</sup> October in response to the application.



7. The gist of the Replying Affidavits is that the Tenant had been illegally collecting rent from some subtenants and has never remitted the said rent to the Landlord. They further state that the subletting was done without their knowledge and permission.
8. The deponents also stated on oath that the tenants decline to sign a new lease agreement that was sent to them pursuant to a notice to terminate or alter terms of tenancy that sought to increase to the rent payable from KShs. 80,000/= to KShs. 185,000/=.
9. The tenant filed a Supplementary Affidavit dated 10<sup>th</sup> November 2022 and a Further Supplementary Affidavit dated 20<sup>th</sup> January 2023 disputing who the bonafide landlord of the suit premises is.
10. The respondent filed a Further Replying Affidavit dated 17<sup>th</sup> November 2022 stating among other things that it issued a notice of increment of rent and a lease which were unopposed by the Tenant.
11. The tenant filed Submissions dated 10<sup>th</sup> November 2022 while the Respondent filed its submissions dated 17<sup>th</sup> November 2022 and Supplementary Submissions dated 1<sup>st</sup> February 2023.

### **C. Issues for determination**

12. From the facts outlined above, two issues commend themselves for determination;
  - i. Whether the Landlord's issued a valid notice to terminate the tenancy?
  - ii. Whether the rent increment to KShs. 185,000/= was justified?

### **D. Analysis and Determination**

#### **i. Whether the Landlord's issued a valid notice to terminate the tenancy?**

13. Section 4 (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 as follows;
  - (2) "A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.
14. In the present matter, it is evident that the landlord issued a notice to terminate or alter terms of the tenancy that conformed to the requirements of the Act. However, the said notice was designed to alter the terms and specifically to increase the rent from Kshs. 80,000/= to Kshs. 185,000/=

#### **ii. Whether the rent increment to Kshs. 185,000/= was justified?**

15. This increment is only justified with the backing of a professional expert report of a valuer it is prudent, fair and just for the landlord to issue a valuation of rent report to enable the tenant and this tribunal understand the criteria used to arrive at the proposed new rent of Kshs. 185,000/=. The Tenant is also at liberty to do their own rent valuation report if they fail to agree on a joint report.

### **E. Orders**

16. Consequently, the tenant's application dated 5<sup>th</sup> October 2022 is allowed in the following terms;
  - a. The parties shall file a valuation of rent report for current rent assessment in 15 days each and the landlord shall commence;
  - b. The tenant to keep paying rent at Kshs. 80,000/= as and when it falls due;



- c. Matter to be fixed for hearing of the reference in 30 days, that is on 30<sup>th</sup> May 2023 to confirm compliance;
- d. Costs shall be in the cause.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 13<sup>TH</sup> DAY OF APRIL 2023 IN THE PRESENCE OF KIRUI HOLDING BRIEF FOR NJERU NYAGA FOR THE TENANT AND KIMATHI FOR THE LANDLORD**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

