



**Beakim Limited v Micmoll General Importers & Supplies (Tribunal Case
E264 of 2023) [2024] KEBPRT 298 (KLR) (Civ) (26 March 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 298 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E264 OF 2023
N WAHOME, MEMBER
MARCH 26, 2024**

BETWEEN

BEAKIM LIMITED LANDLORD

AND

MICMOLL GENERAL IMPORTERS & SUPPLIES TENANT

JUDGMENT

1. This suit was triggered by the Tenant's notice to obtain reassessment of rent in relation to its occupied space known as F2N within LR No. Kwale/Ukunda/648/649 in the building otherwise popularly known as the Gate Mall outlets.
2. The notice which is dated 13/6/2023 was said to be brought under Section 4(3) of the [Landlord and Tenant \(shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) hereinafter "the Act" raised the following grounds in support of the notice:-

"That the current market Rent for the Tenancy premises is Kshs.60,459 per month exclusive of services and VAT and hence there is need to reassess rent at Kshs.29,000/- per month down from the current rent at Kshs.60,459 per month exclusive of services at VAT".

3. The landlord on being served with the notice, it went into hibernation like the Mexican fox and forgot that the winter was over. It was only after only prodded into action after the notice took effect on the 1/9/2023. This triggered heightened activities which included the filing of the notice of motion application dated 31/10/2023. It sought for the following reliefs:-
 - i. Spent,



- ii. That the Honourable Tribunal be pleased to grant the Landlord/Applicant leave to file reference out of time.
 - iii. That the Tenant/Respondent, its representatives, employees and/or agents be restrained from reducing the monthly rent of unit on the first floor of the Gate Mall outlets situated on LR No. Kwale/Ukunda/6488 and 649 occupied by the Tenant pending the hearing and determination of this application.
 - iv. As in No. (iii) above “pending the hearing and determination of the reference to this Tribunal by the landlord.
4. By the orders of this court made on the 1/11/2023, prayers 1 and 2 on the face of the motion dated 31/10/2023 were allowed by the court’s own motion. The landlord was granted seven (7) days to file its reference. The reference dated 9/11/2023 was however filed on even date without any further leave of the court and outside the seven (7) days granted by this court. It is important to note that the said orders of 1/11/2023 were signed on the same date and there should therefore be no plausible justification for non compliance. I however revisit that issue later in this judgement.
 5. The Tenant in response to the Landlord’s reference filed the Replying Affidavit which sadly was sworn by counsel on record thereof Mr. Peter Omwenga on the 7/11/2023 and contained contested issues. This obviously put the said counsel in a very uncomfortable situation in the event there would be required clarification on any of the issues in contention.
 6. By consent of the parties entered into on the 11/12/2023 and 26/1/2029 with concurrence of the court, it was agreed to dispose all the issues herein to include those in the notice of motion dated 31/10/2023 and those in the reference dated 9/11/2023 by filing respective valuation reports and submissions.
 7. The Tenant duly filed the valuation report prepared by M/S Musyoki and Associates and dated 5/6/2023 and the submissions dated 6/2/2024. On its part, the Landlord filed the valuation report dated 24/1/2024 prepared by Firmus Realtors and the submissions thereof dated the 14/2/2024.
 8. I have perused all the materials placed before me by the respective parties and wish to in brief state their cases as follows:-
 - A. Case For The Tenant
 - i. It had served the landlord with a notice for reassessment of rent payable on the demised premises from the up of Kshs.60,459 to Kshs.29,000/- and which took effect on the 1/9/2023,
 - ii. He had paid rent upto August, 2023 after the expiry of the previous lease between the parties and thus was a protected Tenant,
 - iii. That comparable premises in the locality charged amounts equivalent to Kshs.30,000/- for same space occupied.
 - iv. That the demised premises were inspected on the 3/5/2022 and the outcome of the inspection informed the valuation report.
 - v. The comparables relied on in its report were game masters shop, Beauty Parlour shop within Gateway outlets, Temu prints in Rongai complex and Tslia complex; and



- vi. The comparable leases relied on by the landlord were for very current leases which could not apply.

B. The Case For The Landlord

- (i) It failed to file a reference on time as there were on going negotiations with the Tenant on enactment of a new lease after the expiry of the previous one on the 30th June 2023.
- (ii) The Tenant was dishonest in that it wanted to seize the opportunity of the temporary controlled tenancy to defeat the earlier negotiated and freely entered into lease agreement.
- (iii) The last rent payable by the Tenant at the expiry of the expired lease was Kshs.48,620 and it was illogical to want to reduce same to Kshs.29,000/-(iv) a comparative study of similar premises especially those located on the Gatewall outlets had an average charge of Kshs.,110.00 per square feet.
- v. The same rates applied to similar spaces within the same locality and therefore the rent chargeable on the Tenant should be Kshs.63,220 including service charge and VAT.
- vi. The Gate Mall outlets was in a class of its own with frontage to main Mombasa-Ukunda Road, and is within a busy tourist hub.

- 9. The landlord therefore sought that the rent be re-assessed to Kshs.63,200/-.
- 10. On evaluation of the evidence on record including the parties respective valuation reports and submissions, am of the view that the issues for determination in this matter are the following:-
 - i. What is the appropriate rent to be paid on the demised premises.
 - ii. Who should bear the costs of this suit,
- 11. Before I venture into the issues above, I recognize that the reference dated 9/11/2023 was filed outside the orders of this court issued on the 1/11/2023. However, in pursuit of rendering substantive justice to both parties, I have invoked the provisions of Article 159 of Constitution. This also applies to the Tenant who filed an affidavit on contested issues through its advocates.
- 12. Article 159(1) provides that:-

“Judicial Authority is derived from the people and vests in and shall be exercised by the courts and Tribunals established by or under this constitution.

Article 159(d) provides that:-

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

- (d) “justice shall be administered without undue regard to procedural technicalities”.

- 13. It is therefore my view that for the larger interest of justice and inspite of the shortfalls in the respective cases for both the Tenant and the Landlord, this matter will be determined on its merits. The reference dated 9/11/2023 and the replying affidavit sworn on the 7/11/2023 are therefore deemed to be properly on record.



14. I further determine that the notice of reassessment of rent by the Tenant dated 13/6/2023 is compliant with Section 4(3) of the act and Regulation 4(3) of the Regulations thereof. The only issue for my consideration is whether the same has satisfied the requirement of the law to have the rent payable reassessed downwards from Kshs.60,459 to Kshs.29,000/- all inclusive.
15. A guide to reassessment of rent may be found in Regulation 9 of the Regulations to the Act which provides that:-
- “An Authority to inspect or view any premises issued by the tribunal shall be in for G in the schedule to these Regulations”.
16. Form G as provided in the regulations gives some guidelines to help in reassessment or determination on the appropriate rent payable. The same are:-
- (i) The original cost of construction of the building,
 - (ii) The age of the building,
 - iii. The market value of the land on which the premises are built,
 - iv. The improvements,
 - v. Amenities or services provided by the landlord, and
 - vi. The rent at which the premises were let for the past three years.
17. In my view, very little has changed in regard to the demised premises vis a vis the aforesaid guidelines. The rent payable increased by a marginal less than Kshs.8,000/- for the last five years from Kshs.40,100/- to Kshs.48,620 exclusive of service charge and VAT. It summed upto Kshs.60,459 all inclusive.
18. It is important to appreciate that though now a controlled tenancy, the expired lease was entered into voluntarily between the parties. At the lapse of the same, the rent payable all inclusive on the demised premises was Kshs.60,459.
19. The Tenant has not demonstrated in anyway, that the rent chargeable within the building where the demised premises is situated and even in the locality at Kshs.110 per sq. ft as utilized was unreasonable nor contrary to the market reality.
20. In all I do not find any reason whatsoever to disturb the rent payable at Kshs.60,459 at the expiry of the lease between the parties on the 30/6/2023. I will allow the same to remain in effect.
21. The Tenant will therefore continue paying the rent of Kshs.60,459 all inclusive, the 1/4/2024. However, the Notice of re-assessment of rent dated 13/6/2024 having taken effect on the 1/9/2023, the Tenant will pay rent for the months of September, October, November and December 2023 and January, February and March, 2024 at Kshs.29,000/- exclusive of service charge and VAT.
- (ii) who should bear the costs of this suit.
22. The Landlord filed the reference dated 9/11/2023 late despite clear and unequivocal orders of the court. This is after earlier on delaying filing of the same by almost 3 months. On its part, the Tenant's grounds for reassessment of the rent have failed. The wisdom of that reality is that each party do bear own costs of the suit.
23. In conclusion, I make the following orders:-



- (a) That the Tenant will continue paying rent at Kshs.60,459 all inclusive effective the 1/4/2024.
- (b) That the Tenant will pay rents for September, October, November and December 2023 and January, February and March, 2024 at Kshs.29,000/- per month exclusive of service charge and VAT, the notice of reassessment of rent dated 13/6/2023 having taken effect on the 1/9/2023.
- (c) That each party will bear own costs of this suit.

Those are the orders of the court.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MARCH 2024.

HON. NDEGWA WAHOME MBS -MEMBER

BUSINESS PREMISES RENT TRIBUNAL

JUDGMENT DELIVERED IN THE PRESENCE OF M/S WAMBUI HOLDING BRIEF FOR MR. NDUATI FOR THE LANDLORD AND MR. OMWENGA FOR THE TENANT.

HON. NDEGWA WAHOME MBS - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

