



**Njikari v Njugi (Tribunal Case E40 of 2022) [2023] KEBPRT 637 (KLR)
(Commercial and Tax) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 637 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E40 OF 2022
A MUMA, MEMBER
OCTOBER 6, 2023**

BETWEEN

MICHAEL KABUGA NJIKARI APPLICANT

AND

ESTHER NJERI NJUGI RESPONDENT

RULING

A. Parties and Representatives

1. The applicant Michael Kabuga Njikari is the tenant and rented for the business in the suit property (hereinafter known as the ‘Tenant’).
2. The tenant is appearing in person
3. The Respondent Esther Njeri Njugi is the Landlady and rented out space to the tenant for the business in the suit property (Hereinafter known as the ‘Landlord’)
4. The firm of Tess Kimotho & Co. Advocates represents the Landlady in this matter. tesskimothoadvocates@gmail.com

B. The Dispute Background

5. The tenant moved this tribunal by way of reference dated 8th July 2022 and a Notice of Motion application of even date. The tenant sought among others, orders to restrain the Landlord from interfering with the Tenant’s quiet enjoyment of the premises.
6. Vide an Order of this Tribunal issued on 15th August 2022, this honourable Court restrained the Landlady from interfering with the Tenant’s quiet possession of the suit premises.



7. The Landlady filed a statement of Grounds of opposition dated 7th September, 2022 on the basis that the Tenant's Application was incompetent, bad in law and abuse of Court process.
8. Subsequently further filed a Replying Affidavit dated 29th October 2022 in response to the Tenant's Application and Reference both dated 8th July 2022.
9. The Tenant filed a Further Affidavit dated 22nd November, 2022 seeking to challenge the Replying Affidavit by the Landlady.
10. On 17th February, 2023, this honourable Tribunal issues further Orders inter alia that the tenant to be opened for back door failure to which he would be at liberty to break in; the landlady and the tenant to agree on new rent from 2023 (April), in default for rent increment; and landlady to issue statement of all years at a rental increment of 10% per annum and that any balance would be payable.
11. On 5th April 2023, the Tenant a Notice of Motion application dated 5th April 2023 under a certificate of even date. He sought among others, Orders that this Tribunal grant him compensation for the renovations undertaken by himself on the premises. He also sought that the Tribunal order that the Landlady compensate him for the loss incurred as a result of closure of the suit premises for a period of 9 days.
12. Vide an Order of this Tribunal dated 2nd May 2023, this Tribunal certified the said application as urgent and directed that the same be served upon the Landlady for hearing on 29th May 2023.
13. In response, the Landlady filed Replying Affidavit dated 26th June 2023 and grounds of Opposition to the Application dated 5th April 2023 on the grounds that the application is incompetent and bad in law.

C. 1st & 2nd Respondents' Case

14. The Landlord deponed that he provides a rent statement of account to every tenant in the suit property.
15. He stated that the tenant has never raised any query in the amounts appearing on the statement.

D. Jurisdiction

16. There is no dispute as to the jurisdiction of this Court.

E. Issues for Determination

17. I have carefully perused all the pleadings and evidence presented before this honourable Court by the parties. It is therefore my respectful finding the two issues that fall for determination by this Tribunal are: whether the tenant is in rent arrears and whether the rent increment by the Landlady is valid.

F. Analysis And Findings

Whether the rent increment by the landlady is valid

18. The tenancy relationship between the tenant and the Landlady herein was created vide a tenancy agreement dated 1st August 2020 and executed by both parties on the even date.
19. As a general rule, parties are bound by their contract. Thus, the law requires that parties entering into a contract understand both express and implied terms. For purpose of this agreement, the tenant and the landlady are required to be free agent or have free state of mind to create a mutual tenancy relationship.



20. In the case before me, I note that there are no disputes in respect to the subject agreement. I will therefore proceed to analyze its terms.
21. Clause 3 of the of the Tenancy Agreement provides that:

“That the Landlord shall be at liberty to increase the rent payable per month at the rate of 10% and the same shall be communicated to the tenant by issuing three (3) months’ notice after expiry of 1 year from the date of commencement of the tenancy”
22. It is well within the mind of this Tribunal and as recorded in the proceedings on 17th February, 2023 that the efforts by the Landlady to increase the rent were within the ambits of this agreement. A proper notice was issued to the Tenant in January 2022. I also understand that, pursuant to the subject tenancy agreement, 1 year had lapsed since the execution of the said agreement, it was therefore proper to invoke clause 3 of the agreement and issue the said notice.
23. This Tribunal on 17th February 2023 issued inter alia orders and directions that the landlady and the tenant to agree on the new rent from April 2023. In the interest of the spirit of the Tenancy Agreement and particularly clause 3, I wish to reiterate and find that the increment of the rent is valid and the same shall be capped at the rate of 10% per annum.
24. Further, I note respectively note that parties herein have been granted an opportunity to agree on the monthly rent payable and it is evident that they have failed. As such, vide the powers of this Tribunal vide section 12 of Cap 301 and in line with the rent escalation as contained in tenancy agreement between the parties herein, I shall proceed to calculate the rent payable in the premises as follows:

| No. | Year | Rate of Escalation | Amount escalated | Rent Payable |
|-----|-----------------------------|--------------------|------------------|--------------|
| 1. | August 2020- August 2021 | - | - | 10,000.00 |
| 2. | August 2021- August 2022 | 10% | 1,000.00 | 11,000.00 |
| 3. | August 2022- August 2023 | 10% | 1,100.00 | 12,100.00 |
| 4. | August 2023- August 2024 | 10% | 1,210.00 | 13,310.00 |

Whether the tenant is in rent arrears

25. It is trite law as judicially been settled by various Courts that evidence of payment of rent shall be in form of receipts.
26. The Landlady avers that the tenant is in rent arrears in the tune of Kenya Shillings One Hundred and Twenty-Four Thousand, Six-Hundred and Fifty-One and eight cents (KShs. 124,651.80).
27. On the other hand, the tenant in his rival supplementary affidavit deponed that he is not in any rent arrears as alleged by the Landlady. He further stated that he had hitherto been diligently paying his rent in the suit premises.



28. In its wisdom, this Tribunal on 17th February 2023 directed that the Landlady do issue a statement of rent payment. This would allow this Tribunal account for all the rent payable and paid by the tenant and ascertain rent arrears if any owed by the tenant.
29. I however note that the Landlady has not issued statement of rent payment as directed by this Tribunal on the said day. As such, it is impossible for this Tribunal to dispense with the issue of whether or not the tenant is in rent arrears. Further, it is also evident that they have failed to prove the arrears if any. In his circumstances and particular on this issue, directions on the way forward shall be issued below.
30. In the upshot, I now turn to the prayers made by each party in these proceedings and make the following orders.

G. Orders

31. The Tenant's Notice of Motion Application dated 8th July 2022 is partially allowed:
- The Orders of this Tribunal issued on 17th February 2023 affirmed and adjusted in the following terms:
1. The Tenant to continue paying rent as and when it falls due at the rate of KShs. 13,310.00 per month, in default.
 2. In case of any arrears in rent, landlady shall be at liberty to apply and file their reference/claim in the right forum considering the tenant has since moved out as stated on the ruling date.
 3. Matter is marked as settled.
 4. Each party shall bear their costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 6TH DAY OF OCTOBER 2023 IN PRESENCE OF THE APPLICANT/TENANT HIMSELF AND MAKAZI FOR THE RESPONDENT/LANDLADY.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

