



**M'Mbura v Gikonyo (Tribunal Case E307 of 2024)
[2024] KEBPRT 889 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 889 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E307 OF 2024
A MUMA, MEMBER
JULY 3, 2024**

BETWEEN

JOHN MAORE M'MBURA TENANT

AND

CHARLES NGUGI GIKONYO LANDLORD

RULING

A. Parties and their Representatives

1. The Tenant, John Maore, (the “Tenant”) is the tenant of Shop Number 1 on a building located along 12th Street Eastleigh opposite moonlight Building within Nairobi County (the “suit premises”).
2. The Firm of Michael Were & Associates represents the Tenant in this matter.
3. The Landlord, Charles Ngugi Gikonyo (the “Landlord”), is the registered proprietor of the suit premises and hence the Landlord.
4. The firm of Charles Dan & associates Advocates represents the Landlord in this matter.

B. Background of the Dispute

5. Through a Reference and an Application dated 4th March 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders inter-alia: orders certifying the matter as urgent, restricting the Landlord from evicting him and demanding top up goodwill of KShs. 1,500,000.00.
6. Upon perusal of the Application, this Honourable Tribunal on 5th March 2024 issued interim orders prohibiting the Landlord and his servant and/or agents from evicting the Tenant and from interfering with the Tenant’s quiet occupation and lawful enjoyment of the suit premises pending interpartes hearing and determination of the Tenant’s Reference and application.



7. Further, the Tribunal ordered that the Reference and Application be served upon the Landlord for hearing on 21st March 2024 and a return of service be filed.
8. In response to the Tenant's Application, the Landlord filed a Replying Affidavit dated 26th March 2024.
9. The Tenant filed submissions in support of their Reference and Application dated 29th April 2024 and the Landlord subsequently filed his submissions dated 17th May 2024.
10. It is the Tenant's Reference and Application dated 4th March 2024 that is the subject of this ruling.

C. Tenant's Case

11. The Tenant avers that he has been dutifully and diligently paying his rent of KShs. 40,000.00 and is not in any arrears. He further avers that the Landlord without any justifiable cause and contrary to the provisions of Cap 301 Laws of Kenya is demanding top up goodwill and has issued verbal notice threatening to evict him from the suit premises.
12. The Tenant submits that having paid goodwill at the commencement of the lease that lapsed in 30th June 2023 and having kept all covenants as per the lease agreement, it will be bad practice if the Landlord is allowed to demand further goodwill in respect of the suit premises.

D. Landlord's Case

13. The Landlord avers that upon the expiry of the lease agreement dated 4th June 2018, he communicated to the Tenant that he was willing to renew his lease subject to rent increment from KShs. 30,000.00 to KShs. 40,000.00 and payment of goodwill of KShs. 1,500,000.00.
14. The Landlord submits that vide a letter dated 22nd June 2023, the Tenant expressed his eagerness to renew the lease on the proposed terms and at no point did he express that he was opposed to the new terms of the lease.
15. Further, the Landlord submits that the Tenant challenged the rent increment in BPRT E751 of 2023: John Maore M, Mbura v. Charles Ngugi Gikonyo where Hon. Mike Makori dismissed the Tenant's Reference and Application dated 8th August 2023 for the reason that the Tenant made an inquiry on the lease and therefore, the Tenant had impliedly accepted the new terms of the lease and cannot be allowed to deny the existence of terms changing engagements between the rent payments.
16. It is the Landlord's case that the Tenant should not be allowed to select the terms of the new lease since he has complied with the rent increment to KShs. 40,000.00 but has failed to pay goodwill.

E. Jurisdiction

17. The Jurisdiction of this Honourable Tribunal is not contested by either party and therefore is not in dispute.

F. List for Issues for Determination

18. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties, it is therefore my respectful finding that the sole issue that falls for determination is; Whether the Landlord is entitled to further goodwill upon renewal of the lease agreement.



G. Analysis and Determination

19. The powers of the Business Premises Rent Tribunal are provided by the Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya (hereinafter the Act). Section 12(1) (i) of the Act provides that:
 4. “In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.”
20. This Tribunal notes that there is decision by my brother Hon. Makori in BPRT E751 of 2023: John Maore M, Mbura v. Charles Ngugi Gikonyo which allowed rent increment on the grounds that the Tenant had not opposed the terms of the new lease. It was his opinion that the Tenant impliedly accepted the terms of the lease agreement by requesting for a written lease vide a letter dated 22nd June 2023.
21. However, I am keen to note that although the letter indicated the Tenant’s willingness to renew the lease under the new terms, it cannot be concluded that the said terms became binding upon the parties.
22. It is my considered opinion that this was a pre-contractual stage where parties are allowed to negotiate the terms of a contract to achieve consensus, an essential element of a valid contract. Therefore, the terms of the new lease could not have become binding upon the Tenant if he had not executed the new lease.
23. Be that as it may, the Tenant has been paying rent at a monthly rate of KShs. 40,000.00 as ordered by the Court in the aforementioned decision but is reluctant to pay further goodwill. Consequently, the Tenant has challenged the payment of a further goodwill of KShs. 1,500,000.00 on the grounds that it is unfair having paid goodwill of KShs. 1,000,000.00 at the beginning of the expired lease dated 4th June 2018.
24. It is not in dispute that the Tenant paid good will at the commencement of the tenancy. This was for the reasons that the suit premise was established, with a reputation and highly attracting customers. Which is the reason for payment of good will to a landlord by any tenant. Further, the parties had executed a goodwill agreement dated 4th June 2018.
25. The issue to grapple with is how many times good will should be paid. I note that the Tenant signed a goodwill agreement dated 4th June 2018 wherein the Tenant was required to pay goodwill of KShs. 1,000,000.00 as a pre-contractual condition. The Tenants duly settled the said amount and the same has not been contested by the Landlords.
26. In reaffirming the meaning and rationale of a good will in business, it is in need true that, good will is a premiered reputation, patronage and other intangible assets considered in appraising business and in view of the foregoing issue pending determination before me, I find that, good will can only be paid once.
27. The Tenant having duly paid the same to the Landlord at the start of tenancy, is not in any arrears, neither do they fall due for Tenant to settle upon renewal of the lease.

H. Orders

28. In the upshot the Tenant’s Reference and Application dated 4th March 2024 are hereby allowed in the following term;



- a. The Landlord is hereby restricted from interfering with the Tenant's quiet enjoyment of the lease;
- b. Tenant to keep paying rent at a rate of **KShs. 40,000.00** as and when it falls due; and
- c. Tenant to clear any outstanding arrears of utility bills.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED BY HON ANDREW MUMA AT NAIROBI ON THIS 3RD DAY OF JULY 2024 IN THE PRESENCE OF WERE FOR THE TENANT AND WANJALA FOR LANDLORD.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

