



**Chege & Partners v Mugo (Tribunal Case E328 of 2021)  
[2023] KEBPRT 1230 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1230 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E328 OF 2021  
CN MUGAMBI, CHAIR  
MAY 5, 2023**

**BETWEEN**

**JOHN CHEGE & PARTNERS ..... LANDLORD**

**AND**

**PETER GICHUKI MUGO ..... TENANT**

**RULING**

1. The landlord's notice to terminate or alter terms of tenancy is the one dated 1.7.2021. In the said notice, the landlord seeks to increase the rent from Kshs. 4,500/= per month to Kshs. 9,000/= per month and free from any deductions. The grounds upon which the increment is sought are that;-
  - a. The present rent of Kshs. 4,500/= is much below what having regards to the terms of the tenancy ought reasonably be expected to be obtained in the open market.
  - b. The other charges claimed are also in keeping with the trends in the open market.
2. The effective date of the tenancy notice is expressed to be 1.10.2021.
3. The tenant did not agree with the notice to alter the terms of his tenancy and filed a reference to the tribunal under Section 6(1) of Cap 301.
4. Both parties have filed valuation reports and the landlord has filed submissions in support of the notice. The tenant on his part opted not to file any submissions.

**The landlord's valuation report**

5. The landlord's valuation report is the one prepared by Premier Valuers Ltd dated 5.1.2022. The report has used the following comparables;-



L.R. No.	Location	Rent Per Square Foot per month (Kshs.)	Rent per Square meter per month (Kshs.)
209/138/4	River road	149.70	1610.30 p/sqm
209/697/38	River road	161.29	1736.11 p/sqm
209/8246	River road	164.06	1,766 p/sqm
209/138/3	River road	149.52	1609.66 p/sqm
209/138/2	River road	157.59	1699.72 p/sqm

6. The report has averaged the above rates and arrived at kshs. 156.492 per square foot per month which translates or Kshs. 1,684.40 per square meter per month.
7. The report finally assesses the rent payable at Kshs. 63.41 square ft x 156.5 =9,923/= rounded to Kshs. 9,920/= per month exclusive of service charge.

#### **The Tenant's valuation report**

8. The tenant's valuation report is prepared by Agility Valuers Ltd and dated 19.2.2023. according to the report, the subject premises occupy approximately 64.56 square feet. The report has used the following comparables:-

Premises	Location	Rate per square foot per month	
Simba Center Building	River road	Kshs. 120.00/= ground floor Kshs. 100.00/= first floor	
Central Exhibition Building	River road	Kshs. 120.00/= ground floor Kshs. 100.00/= first floor	
Haaki Business Center	Price road	Kshs. 130.00/= ground floor Kshs. 100.00/= first floor	
Jamii Arcade	Duruma road	Kshs. 100.00/= ground floor Kshs. 80.00/= first floor	

All the above charged rates are inclusive of service charge)

9. The tenant's report has adopted Kshs. 100.00/= per square foot (inclusive) for letting of the subject shop. The total monthly rent recommended is therefore Kshs. 6,456.00/=.



## Analysis and determination

10. The power to determine or vary rent payable in respect of a controlled tenancy is donated by Section 9(2) of [Cap 301](#) wherein it is provided as follows:-

“Without prejudice to the generality of this section, a tribunal may upon reference;

- a. Determine or vary the rent to be payable in respect of the controlled tenancy, having regard to the terms thereof and to the rent at which the premises concerned might reasonably be expected to be let in the open market.....”

11. The [Act](#), Cap 301 while empowering the tribunal to determine the rent payable does not provide a hard and fast rule for the determination of the rent. The exercise of this power is therefore an exercise in discretion and the tribunal is required to be judicious in the exercise of the said powers. The reasonableness of the rent assessed must be in the mind of the court.

In *Cleaners Limited vs Barclays Bank & Co.*, the court stated;

“it is the reasonableness of the rent that must be in the forefront of the tribunal’s investigation and determination. It must be the concern of this court too. The average rates per square foot or meter of a number of nearby buildings on ground floor premises in which similar trades are exercised are among other things relevant to assessing the rent that would reasonably be expected in the open market.”

12. The tribunal in assessing rent is also required to consider all the reports before it, go into individual comparables and deciding which is a better report rather than merely arriving at a mean figure of the parties valuation reports. (See the case of *Tala Investments Ltd vs Green Spol Ltd*, Civil Appeal No. 269 of 1993).
13. The subject premises is a shop on the upper floor of the bigger premises. The tenants valuation report averages kshs. 100.00/= per square foot for the first floor comparables. The landlord’s valuation report gives an average of Kshs. 156.42 for the first floor comparables used therein. I do note that the tenants valuation report does not provided for the lettable areas of the comparables but merely gives the rates per square foot per month. I am not therefore able to compute the comparables to the suit premises in terms of the sizes. I however note that the landlord’s report is clear on the sizes of the comparables for example comparable Number 1, L.R. No. 209/135/4 River road, measuring 66.80 square feet which compare favourably with the suit premises which measures 64.56 square feet according to the tenant’s valuers and 63.41 square feet according to the landlord’s valuers. I will adopt the landlord’s valuers measurements as they favour the tenant anyway.
14. The landlord’s comparable Number 1 has a rent payable of Kshs. 10,000/= per month at the rate of Kshs. 149.70/= per square foot per month. I find the landlord’s report to be the better report and I adopt the same for purposes of this assessment. Although the assessment using this comparables comes to Kshs. 9,492.477/= per month, I will allow/approve the terms of the tenancy notice as prayed in the sum of Kshs. 9,000/= per month.
15. The effective date of the notice to alter terms of tenancy will be 1.5.2023.
16. The landlord being the successful party will have the costs of the reference.

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

**HON. CYPRIAN MUGAMBI**



**CHAIRPERSON**

**5.5.2023**

In the absence of the parties

