

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 250 OF 2012

ELIJAH GITARI T/A G.R. SERVICE.....1ST APPELLANT

MARIA WAMBOI.....2ND APPELLANT

MICHEAL NDEGWA.....3RD APPELLANT

VERSUS

ANN NGARU WAITHAKA.....RESPONDENT

JUDGMENT

This appeal arises from the decision of the Chairperson Business Premises Tribunal delivered on 11th May, 2012. The appellants herein were tenants of the respondent in premises situated in the Central Business District of the City of Nairobi. The respondent issued notices to the appellants to increase rent which notices were contested by the appellants. The references were consolidated and in the process, the parties agreed to file joint valuation reports made by the appellants' and the respondent's valuers. This joint report was filed on 2nd September 2011.

Following the filing of the joint report, the tribunal proceeded to make a determination and in the judgment dated 11th May, 2012 ordered that the tenant in shop No. O – G.R. Services will pay Kshs. 25,000/= per month plus VAT, shop No. 6 – Linear fashions Kshs. 40,000/= per month. Shop No. 20 – Jacma for elegance kshs. 38,300/= and the effective date would be 1st May, 2010. The respondent was also awarded costs of the determinations.

The appellants were aggrieved by this determination and lodged this appeal. From the Memorandum of Appeal the appellant complained that the Tribunal ignored the joint valuation report on lettable area and recommendation made by both parties, and also did not take into account factors set out in Section 9 of the Landlords and tenant Act Cap 301 Laws of Kenya. The Tribunal was also faulted for not taking into account submissions made by both advocates for the parties and assessed rent that were above those recommended by the respondent's valuers. In effect, the chairperson failed to protect the tenants from exploitation by landlords as envisaged by the preamble to the Act among other complaints.

In arriving at the said conclusion, the Chairperson addressed the reports filed by the parties herein. The Chairperson also looked at comparables used by both parties and picked the best evidence in the assessment of rent which she analysed.

As the first appellate court, I have looked at the material presented which included the reports made by the valuers and the submissions by the parties herein. I see no exaggeration in the demand by the respondent and also the assessments reached by the valuers. It is instructive to note that the professional qualifications of the valuers have not been questioned by any of the parties; if anything, they address the subject of equity, balancing the interest of both the landlord and the tenant and bearing in mind that investment in real estate should be in tandem with current trends.

After considering matters placed before the court, I am unable to disturb the judgment of the tribunal in assessment of rent. The effective date has been made an issue and I think there is merit in the complaint in that, the appellants were not to blame for the delay in the analysis which the tribunal also observed in its judgement. It is the valuers who did not submit the joint report on time and therefore, the effective date shall be the date when the joint report was filed and that is September, 2011.

The end result is that the appeal is dismissed but each party shall bear their own costs.

Orders accordingly.

Dated, signed and delivered at Nairobi this 24th day of October, 2018

A. MBOGHOLI MSAGHA

JUDGE