



**Mwangi v Ndegwa (Environment and Land Appeal 6 of 2017)
[2023] KEELC 18493 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 6 OF 2017
JO OLOLA, J
JULY 6, 2023
(FORMERLY NYERI HCCA NO. 11 OF 2017)**

BETWEEN

EDWARD NJOROGE MWANGI APPELLANT

AND

WILLIAM KIMUNYU NDEGWA RESPONDENT

RULING

1. By a Notice dated November 25, 2015, William Kimunyu Ndegwa (the Respondent) sought to increase the rent payable in respect of the business premises occupied by Edward Njoroge Mwangi (the Appellant) from Kshs 15,000/- to Kshs 60,000/- per month with effect from February 1, 2016.
2. The Appellant opposed the notice by filing a reference before the Business Premises Rent Tribunal. The Parties herein then filed different Valuation Reports before the Tribunal. Due to the substantial differences in the Reports as concerns the lettable area, the Tribunal did order the valuers to inspect the premises afresh and to submit a joint report on the lettable area. Based on the Report submitted, the Tribunal determined the rent payable at Kshs 26,852/- with effect from February 1, 2016.
3. The tenant/Appellant was however aggrieved by the determination and hence filed this Appeal which was placed before the Honourable Justice L Waitthaka for hearing and determination. Having heard the Parties and in a Judgment delivered herein on February 7, 2019, the Learned Judge allowed the Appellant's Appeal and set aside the findings of the Business Premises Rent Tribunal as delivered on February 17, 2017.
4. At Paragraph 25 of the said Judgment and cognizant that merely allowing the Appeal would not resolve the dispute herein, the Learned Judge directed the Parties to, within 45 days of her Judgment file a joint valuation report in respect of the suit premises to enable the Court to make a determination on the issue of the rent payable in respect of the suit premises.



5. As it turned out, it would appear that in some unclear circumstances when the Appeal was pending for determination and before the Judgment was rendered on February 7, 2019, the Appellant had in the year 2018 vacated the suit premises. Thus when by a letter dated March 14, 2019 the Respondent/Landlord prompted the Appellant to have the Parties comply with the Court's direction, the Appellant's Counsel declined the invite and sought to have the matter marked as settled upon a refund of a sum of money they had deposited in Court.
6. Having failed to get the concurrence of the Appellant on the matter, the Respondent/Landlord proceeded to procure his own Valuation Report for the suit premises. The said Report prepared by Messrs Rank Global Management Limited and dated March 28, 2019 returns a fair market rental value of the lettable area at Kshs 43,160/-.
7. Subsequently and by a Notice of Motion application dated April 12, 2019, the Appellant filed an application herein seeking a review of the Judgment delivered on February 7, 2019 and urging the Court to be pleased to release the sum of Kshs 131,437/- which he had deposited in Court as security to himself.
8. By the said application, the Applicant contended that the Court erred in directing him to file a joint Valuation Report on the rent payable when he was no longer in occupation of the same as a tenant.
9. In a Ruling delivered by this Court on December 9, 2022, the said application was dismissed after this Court determined that the Appellant was mistaken in the view taken and that the relationship of landlord-tenant between the Parties herein would only determine after the rent that ought to have been paid for the period February 1, 2016 and July 6, 2017 when the Appellant left the suit premises, was determined and paid.
10. Following the said Ruling, the Appellant proceeded on January 19, 2023 to file a Valuation Report purporting to assess the rent due for the said premises. The said Report prepared by Messrs Rwongo Valuers and dated January 18, 2023 puts the value of the lettable area for the demised premises at Kshs 23,170/- per month.
11. As it were, the Report filed by the Appellant was neither the Joint Report envisaged by the Honorable Lady Justice Waithaka in her Judgment delivered on February 7, 2019 nor was it prepared and filed in Court with the permission of the Court.
12. Having failed to file a joint Report within 45 days of the Judgment as directed by the Learned Judge, it was not open for the Appellant to walk into the Court some three (3) years later at his convenience and to proceed to file his own papers thereon and thereafter to invite the Court to make another determination on his Appeal.
13. That Report dated January 19, 2023 was filed in abuse of the Court process. No extension of time was sought before it was filed and it was filed without the leave of the Court. It cannot be allowed herein and must be expunged from the record.
14. In my considered opinion, the only Report that was filed within the 45 days directed in the Judgment is the Report filed by the Judgment-creditor dated and filed herein on March 28, 2019. It was evident that the Landlord/Respondent had solely filed that Report after the Appellant rejected his invitation to have a joint one prepared and filed as per the Court's directions.
15. While I was tempted to use the said Report as the basis for the assessment of the rent payable, it was apparent that the Landlord/Respondent had not counter-appealed and/or contested the findings of the Tribunal that had determined the rent payable for the demised premises at Kshs 26,852/- with effect from February 1, 2016. That being the case and in the absence of a Joint Valuation Report, I



hereby find and hold that the rent payable for the said premises during the relevant period was the sum of Kshs 26,852/- per month.

16. As the Learned Judge had determined in her Judgment of February 7, 2019, each Party shall bear their own costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 6TH DAY OF JULY, 2023.**

In the presence of:

Ms Nanjala holding brief for Gori for the Appellant

Ms Muchai for the Respondent

Court assistant - Kendi

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J. O. OLOLA

JUDGE

