



**Nyaga v Yawa (Environment and Land Appeal E001 of 2025)
[2025] KEELC 4715 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4715 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL E001 OF 2025**

**YM ANGIMA, J
JUNE 19, 2025**

BETWEEN

KIMATHI NYAGA APPELLANT

AND

MAKUPE YAWA RESPONDENT

JUDGMENT

A. Introduction

1. This is an appeal against the judgment of the Business Premises Rent Tribunal (the Tribunal) dated 01.12.2023 in Tribunal Case No, 78 of 2021- Kimathi Nyaga vs Makupa Yawa. By the said judgment, the Tribunal allowed the respondent's notice (the landlord) to increase the rent for the demised premises with effect from 01.01.2024. The appellant was the tenant in the said premises.

B. Background

2. The material on record shows that vide a landlord's notice dated 25.02.2021 to alter the terms of the tenancy under Section 4 (2) of the Landlord and Tenant (Shops Hotels and Catering Establishments) Act (Cap. 301) the respondent sought to increase the monthly rent from Kshs. 5,000 to Kshs. 15,000 which he considered to represent the current open market rate.
3. The appellant opposed the said notice and filed a reference under Section 6 of the said Act requesting the Tribunal to investigate the matter and determine the issue involved. When the reference was listed for directions before the Tribunal it was directed with the concurrence of the parties that the parties do file and exchange their respective valuation reports on the market rent.
4. The material on record shows that the landlord filed a report whereby the monthly rent was assessed at Kshs.30,000/= at the rate of Kshs.500/= per square metre. The area under occupation was given as



1174 square metres. On his part, the tenant returned a valuation of Kshs.6,600 per month at the rate of Kshs.222/= per square metre. The area under occupation was captured as 30 square metres only.

5. When the Tribunal noted that both the area under occupation and the rate per unit were widely varied, it made a further order on 18.10.2022 directing the valuers to visit the demised premises jointly and ascertain the area under occupation and file a joint report to that effect. It would appear that even though the valuers filed what was described as a “joint report”, the area under occupation was never agreed. The applicable rate per square metre of space was also not agreed.

C. Tribunal’s decision

6. It would appear that a joint valuation was never successfully undertaken as intended by the Tribunal. The record shows that the tenant blamed the landlord for failing to co-operate whereas the landlord also blamed the tenant for failing to co-operate in the exercise. In the end, the Tribunal was left with 3 contradicting valuation reports as a basis for making its decision.
7. By a judgment dated 01.12.2023 the Tribunal allowed the respondent to increase the monthly rent to Kshs.30,000 per month with effect from 01.01.2024 on the basis that the tenant occupied a larger area on the ground than 30 square metres which the landlord could not let out to other tenants.

D. Grounds of appeal

8. Being aggrieved by the said judgment the tenant filed the instant appeal raising the following grounds of appeal;
 - a. The Tribunal erred in fact and law as awarding a rent increase beyond what was demanded in the landlord’s notice.
 - b. The Tribunal failed to appreciate the lettable area and hence arrived at a wrong conclusion.
9. As a result, the appellant sought the following reliefs in the appeal;
 - a. The decision of the Tribunal dated 01.12.2023 in BPRT Case No. E78 of 2021 be set aside.
 - b. The appellant be awarded costs of the appeal.

E. Directions on submissions

10. When the appeal was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the appellant’s submissions were filed on 09.04.2025 whereas the respondent’s submissions were not on record by the time of preparation of the judgment.

F. Issues for determination

11. The court has considered the appellant’s grounds of appeal and the material on record. The court is of the view that the issues for determination herein may be summarized as follows;
 - a. Whether the Tribunal erred in law and fact in awarding the respondent the monthly rent to Kshs.30,000/=.
 - b. Whether the appellant is entitled to the reliefs sought in the appeal.
 - c. Who shall bear costs of the appeal.



G. Analysis and determination

a. Whether the Tribunal erred in law and fact in awarding the respondent the monthly rent of Kshs. 30,000/=

12. The court has considered the material and submissions on record on this issue. The appellant submitted that the only area covered by the shop he had let was 30 square metres and that the additional structures were extensions he built himself so the landlord should not charge rent for them. It was the appellant's submission that the only remedy the respondent had with respect to the extension was either to sue for their demolition or to sue for mesne profits.
13. The appellant further submitted that the Tribunal erred in law for awarding the respondent the amount of Kshs. 30,000 which was way beyond the sum of Kshs. 15,000 which was demanded in the notice dated 25.02.2021 seeking to alter the terms of the tenancy by increasing the rent to Kshs. 15,000 per month. The appellant thus contended that the award of the higher sum contravened the rules of pleadings since the respondent was bound by the terms of the notice dated 25.02.2021.
14. It is evident from the material on record that the parties and their valuers were unable to agree on the area to be considered as the lettable area because the appellant had constructed substantial extensions to the original area. According to the reports on record, the appellant had extended the original area of about 30 square metres to about 1174 square metres. It would appear from the appellant's submissions that he considered that he could utilize the additional area either free of charge or as a trespasser.
15. In its judgment the Tribunal considered the issue as follows;

“The two valuers could not agree on the area occupied by the tenant but it is clear from the tenant's report that it only considered the main shop and not the extension. The area occupied by the extension cannot be leased out to any other tenant and it is therefore reasonable to approve the proposed increment of rent from kshs. 5,000/= to Kshs.30,000/ =.....”
16. The court finds no fault or misdirection on the part of the Tribunal in including the extension as part of the lettable area. The reasoning of the Tribunal was perfectly in line with common sense and logic for a person who is occupying and utilizing over 1174 square metres of someone's property cannot demand to pay for a paltry 30 square metres whereas the land owner cannot for all practical purposes let out the additional structures to another tenant. Even if the tenant were to be called upon to pay mesne profits for the extensions it is likely that the amount of mesne profits would be the same as the rent chargeable for the same space.
17. The only aspect of the appeal which appears to have merit is the inconsistency between the amount sought in the landlord's notice (Kshs.15,000) and the amount awarded in the judgment (i.e. Kshs.30,000). It is apparent from the notice to alter the terms of the tenancy dated 25.02.2021 that the landlord was contented with a rental increase from Kshs. 5,000/= to Kshs.15,000/=. The landlord must have contemplated that the new rent would be applicable for several years before requiring a review. In the premises, the court finds that the landlord was bound by the notice dated 25.02. 2024 hence the maximum amount he could obtain was Kshs. 15,000/= per month. The court is thus inclined to interfere with the Tribunal's award of rent in that regard.



b. Whether the appellant is entitled to the reliefs sought in the appeal

18. The court is of the view that the only remedy the appellant is entitled to is a variation of the monthly rent from Kshs.30,000/= to Kshs.15,000/= per month in line with the landlord’s notice dated 25.02.2021 to alter the terms of the tenancy. The effective date shall remain as determined by the Tribunal, that is, with effect from 01.01.2024.

c. Who shall bear costs of the appeal

19. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court is of the view that since the respondent did not oppose the appeal the appropriate order to make is that each party should bear his own costs of the appeal.

H. Conclusion and disposal orders

20. The upshot of the foregoing is that the appellant’s appeal hereby succeeds in part as indicated in the body of the judgment. As a result, the court makes the following disposal orders;

- a. The award of the Tribunal is hereby varied so that the monthly rent of Kshs.30,000/= is replaced with the sum of Kshs. 15,000/=.
- b. Each party shall bear his own costs of the appeal

21. Orders accordingly.

JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 19TH DAY OF JUNE, 2025.

.....
Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

No appearance for appellant

No appearance for the respondent

