



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC. APPEAL. NO. 14 OF 2018**

**EAST AFRICAN SEEDS COMPANY LIMITED.....APPELLANT**

**VERSUS**

**KAUSHIK M. SHAH**

**KASTRURBEN M. SHAH.....RESPONDENTS**

(Being an appeal from the Judgment of Hon. Mbichi Mboroki, Chairperson, Business Premises Rent Tribunal in Tribunal Case No. 344 of 2015 delivered on 23<sup>rd</sup> February, 2018)

**JUDGMENT**

1. The Appellant herein filed an appeal to this Court against the Judgment of the Chairman of the Business Premises Rent Tribunal and raised the following grounds of Appeal:-

- 1. The Tribunal Chairman erred in law and fact in assessing standard rents for the suit premises at an excessively high monthly rents in total disregard of the fair and reasonable comparable given by the tenant.**
- 2. The Tribunal Chairman in assessing the standard rents failed to consider the location and position of the comparable premises and instead took the average of the highest lettable areas as the basis of his assessment of the standard rents and hence arrived at a wrong decision.**
- 3. The standard rents assessed for the premises is unreasonable punitive and oppressive and has occasioned an injustice in the circumstances of the case.**

2. The Court gave directions that the appeal be disposed of by way of Written Submissions. The Appellant filed its submissions on 23<sup>rd</sup> January, 2013. The Respondents filed their submissions on 20<sup>th</sup> February, 2019.

3. The Appellant is a tenant of the Respondents in a premises located along Kijabe Street in Nairobi. On 3<sup>rd</sup> March, 2015 the Respondents issued a notice of rent increment from Kshs.290,480/= to Kshs.450,000/= per month. The Appellant did not agree with the increment. A reference was filed at the Business Premises Rent Tribunal seeking assessment of standard rent for the premises.

4. The Tribunal Chairman directed the Appellant and the Respondents to file their respective valuation reports for purposes of assessment of standard rent. The reports were duly filed and the advocates for the parties agreed that the Tribunal assesses standard rent based on the filed reports without calling the valuers to give evidence on their reports.

5. The Chairperson of the Tribunal assessed the standard rent at Kshs.381,272/= with effect from 1<sup>st</sup> September, 2015. This is what triggered the Appellant to file this appeal in which it raises three grounds. From the grounds of appeal, it is clear that the Appellant is contending that the Chairperson of the Tribunal adopted a wrong method of assessment of rent and thus arrived at an excessively high rent.

6. I have gone through the judgment of the Chairperson of the Tribunal as well as the submissions of the parties to this appeal. The issues which emerge for determination are firstly whether the Chairperson adopted a correct mode of assessment of standard rent and secondly whether the rent which was arrived at is exorbitant.

7. As a first appellate Court, I am expected to evaluate the evidence tendered and arrive at my own conclusion. It is important to note that there was no oral evidence tendered in this case. The Tribunal Chairperson relied on the valuation reports filed.

8. The Appellants argue that the Tribunal Chairperson did not follow the guiding principles for assessment of standard rent. The guiding

principles in assessment of rent include the following:-

- (a) The age of the building.**
- (b) Amenities or services provided by the landlord.**
- (c) The location of the building.**
- (d) The rent at which the premises were let for the past three years.**
- (e) The original cost of construction of the building.**
- (f) The improvements and cost of such improvements.**

9. In the instant case, the valuers adopted the comparable approach in assessing the market value of rent. The two compared rent on premises within the same locality. The Appellant argues that the building is old and is located in a noisy congested area near Koja Mosque. The Appellant therefore argues that the Tribunal Chairperson was wrong in comparing premises No 9 on the Appellant's report with that of premises No. 3 on the Respondent's report.

10. In their submissions, the Respondents contend that there is nothing in the Appellant's report which shows that the premises are on a noisy congested area as the Appellant claims. On the issue of rent in respect of the same building having been assessed in 2013, the Respondents argue that the law provides that rent can be reviewed after two years. The last rent having been reviewed in 2013, the next review was done in 2015 and therefore there was nothing wrong in the Landlords issuing notice of increase of rent in 2015.

11. There is no contention about the lettable area. The lettable area is the same in both the Appellant's report and the Respondents' report. Both reports have stated the condition and the location of the building. The Tribunal Chair analysed the comparables in the report by the Appellant and the report by the Respondents. The Chairperson gave reasons why he picked on comparable No. 9 and No. 3 on the Respondent's report. In arriving at the stand rent he took an average between the Appellant's findings and the Respondent's findings.

12. The Tribunal Chairperson was alive to the fact that the previous rent was Kshs.290,480/=. The Appellants proposed rent was Kshs.290,300/=. On the other hand the Respondents' proposed rent was Kshs.445,500/=. The Chairperson took an average between the two using the comparables given and arrived at rent of Kshs.381272/=. In arriving at this figure, the Tribunal chair took into account the guiding principles in assessment of rent.

13. The Appellant's argument that the building is old and in a noisy congested area has no basis. This argument is in the submissions and is not supported by any of the reports. The two reports are clear that the premises are in good condition. The only observation by the Respondents' valuer's report was that there were minor internal repairs needed and that the walls needed a coat of paint. Otherwise a part from these minor issues the building was sound.

14. The rent was last assessed in 2013. The law allows a landlord to review rent after two years from a previous assessment. There was therefore nothing wrong in the Respondents asking for a review in 2015 because the two year period had lapsed. The method used in arriving at the rent was proper and the rent arrived at was not exorbitant as alleged. I therefore find no merit in the appeal which is hereby dismissed with costs to the Respondents.

**Dated, Signed and delivered at Nairobi on this 30<sup>th</sup> day of May, 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of Mr. Rotich for Mr. Mugalo for Respondent.

Court Assistant - Hilda