

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL NO. 16 OF 2019

PABARI HARIKRISHNA PREMJI

T/A PRAMUK SUPPLIES.....APPELLANT

VERSUS

VELJI KHIMJI MAROO.....RESPONDENT

JUDGEMENT

1. This appeal was heard with ELC Appeal 17 of 2019 on 27/05/2019. The appeals arose from the ruling of the **Business Premises Tribunal (BPRT) Case Numbers 399 and 400 of 2015** delivered in Nairobi on 24/06/2017 by the Honourable Mbichi Mboroki, Chairman of the BPRT. In the references filed by the tenants before the BPRT dated 22/06/2016, the tenants, who are the Appellants in the these appeals opposed the landlord's notice dated 24/04/2015 which sought to alter the terms of tenancy by increasing the monthly rent from Kshs. 50,000/= to Kshs. 120,000/= with effect from 1/07/2015 for the premises known as L.R 209/4583 Kombo Muniyiri Road, Nairobi; and an increase in rent from Kshs. 70,000/= to Kshs. 120,000/= for the property occupied by Shreeji Ceramics, being the appeal in ELC Appeal No.17 of 2019.

2. The main ground for challenging the BPRT Chairman's decision was that he failed to consider the tenant's valuation report as well as the landlord's joint report which was filed by consent of both parties. The Appellant submitted that the BPRT Chairman ordered the preparation of a joint valuation, but only considered the landlord's valuation in arriving at his decision, yet the lettable area under the joint valuation report differs substantially from that in the landlord's valuation. The Respondent submitted that the consent applied to the measurement of the comparables in both reports.

3. Under Section 12 (1) (b) of Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, one of BPRT's mandate is to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances. The method to be employed by the Tribunal to determine the rent payable is not prescribed giving the BPRT a wide discretion over this aspect of its mandate. This court is alive to the fact that it should not disturb the exercise of discretion of the lower court on an appeal unless it is satisfied that the judge misdirected himself.

4. The Chairman of the BPRT directed parties to procure a joint valuation, which he failed to consider in making his determination. The court returns the two files to the BPRT for the sole purpose of determining the rent payable based on the joint valuation undertaken by Premier Valuers Limited who prepared the report dated 5/9/2016.

Dated and delivered at Nairobi this 13th day of December 2019

K.BOR

JUDGE

In the presence of:-

Ms. N. Mwangi holding brief for Mr. K. Opiyo for the Appellant.

Mr. K. rono holding brief for Mr. Kithinji for the Respondent.

Mr. V. Owuor- Court Assistant