



**Central Watch Company Limited & another v Embu Gaturi
Housing Co-op Society Limited (Environment and Land Appeal
E029 of 2023) [2024] KEELC 1251 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E029 OF 2023**

**JO MBOYA, J
MARCH 7, 2024**

BETWEEN

CENTRAL WATCH COMPANY LIMITED 1ST APPELLANT

SONICA FASHIONS LIMITED 2ND APPELLANT

AND

EMBU GATURI HOUSING CO-OP SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The Appellants herein [who were the tenants in the premises belonging to the Respondent] have approached the Honourable court vide Memorandum of Appeal dated the 28th March 2023; and in respect of which same have enumerated and highlighted the following grounds of appeal [verbatim]:
 - i. The Tribunal erred in fixing the rent payable by the 1st and 2nd Appellants to the Respondent at Kshs. 90,000/= and Kshs. 110,000 only, respectively, without any proper legal or factual basis.
 - ii. The Tribunal erred in ignoring [sic] the consent executed by the 1stA Appellant and the Respondent regarding the monthly Rent[s] payable and the waiver of the demand for a security deposit.
 - iii. The Tribunal erred in applying an inappropriate and exorbitant cost per unit as the basis for assessing the monthly rent payable.
 - iv. The Tribunal erred in reaching a determination against the weight of evidence.
 - v. The Tribunal erred in failing to consider the submissions filed on behalf of the Appellants.



- vi. The Tribunal erred in ignoring the Rental Assessment [Valuation] Reports filed by the appellants.
2. Suffice it to point out that the subject Appeal came up for direction[s] on the 2nd November 2023; whereupon the Honourable court ordered and directed that the Appeal be canvassed and ventilated before one Judge; at Nairobi for one day. Furthermore, the Parties agreed to canvass and dispose of the appeal by way of written submissions.
3. Arising from the directions by the Honourable court, the Appellants' herein proceeded to and filed written submissions dated the 22nd January 2024; whereas the Respondent filed written submissions dated the 19th February 2024.
4. Both sets of written submissions are on record.

Parties' Submissions:

Appellants' Submissions:

5. The Appellants filed written submissions dated the 22nd January 2024; and in respect of which same has highlighted and canvassed four [4] salient issues for consideration and determination by the Honourable court.
6. Firstly, Learned counsel for the Appellant has submitted that the Tribunal failed to appreciate and or take into account the relevant and requisite ingredients necessary to be considered prior to and before the monthly rents can be reviewed, varied and/or adjusted.
7. Furthermore, Learned counsel for the Appellants has submitted that even though the tribunal was seized or vested with the requisite Jurisdiction to vary, alter and/or adjust the rents due and payable, the tribunal, however failed to exercise its discretion properly and in accordance with the obtaining circumstances.
8. Consequently and in this regard, Learned counsel for the Appellants has submitted that the Honourable Tribunal therefore arrived at an erroneous conclusion and thus the conclusion/findings by the tribunal ought to be impeached and/or varied.
9. In support of the submissions that the tribunal improperly exercised discretion in arriving at the adjusted rents, Learned counsel for the Appellants has cited and relied on, inter-alia, the holding in the case of *Yooshin Engineering Corporation v AIA Architects Ltd* [Civil Appeal E074 of 2022] [2023] KECA 872 (KLR) (7th July 2023) [Judgment]; *Margaret Wanjugu Nduma & 3 Others v James Gichuki Gathara* (2020)eKLR and *Tala Investments Ltd v Greenspot Ltd* [Civil Appeal No. 269 of 1993] [UR], respectively.
10. Secondly, Learned counsel for the Appellants has submitted that the tribunal erred in law in applying and deploying inappropriate and exorbitant costs per unit, whilst assessing and arriving at the rents payable by and on behalf of the Appellants herein.
11. Further and in addition, Learned counsel for the Appellants has submitted that in adopting and applying the rental rates of Kes.180, 000/= per square feet, which was proposed by the Respondent/ Landlord's valuer, the tribunal ignored and disregarded the valuation report which was tendered by and on behalf of the Appellants [Tenants].



12. In the premises, Learned counsel for the Appellants have thus contended that the Honorable tribunal therefore adopted a slanted and skewed approach in assessing and arriving at the rental rate per square foot over and in respect of the demised premises.
13. In any event, Learned counsel for the Appellants have contended that the Honorable tribunal also failed to take into account various factors and/or circumstances, inter-alia, the age of the building; the cost of construction, the nature of improvement, [if any] and the general state of repair of the premises.
14. Premise on the contention that the Honorable tribunal did not take into account the various factors and/or ingredients, [details in terms of the preceding paragraphs], Learned counsel has invited the Honourable court to find and hold that the ruling and/or determination by the Honorable tribunal was therefore erroneous and wrought with inappropriate consideration[s].
15. Thirdly, Learned counsel for the Appellants has submitted that prior to and before delivering the impugned Ruling, the Appellants herein brought to the attention of the chairperson of the tribunal [sic] the contents of the consent entered into and executed on the 6th October 2022; but which consent the Honorable tribunal ignored and/or better still, disregarded.
16. Additionally, Learned counsel for the Appellants has submitted that insofar as the Parties herein had entered upon and executed a consent, which was (sic) placed before the tribunal; the Honorable tribunal was obligated to adopt and/or comply with the terms of the consent.
17. Further and in any event, Learned counsel for the Appellants has submitted that where the Parties have entered into and/or executed a consent, [like in the instant case], it behooves the court to endorse and adopt the terms of the consent.
18. In support of the foregoing submissions, Learned counsel for the Appellants has cited and relied upon the holding in the case of *National Bank of Kenya Ltd v Pipeplastic Samkolit Kenya Ltd & Another* (2002)Eklr; where the Court of Appeal underscored the position that a contract is binding all the Parties and same cannot be re-written by a court of law.
19. Finally, Learned counsel for the Appellants has submitted that the Honorable tribunal ignored, disregarded and thus failed to take into account material evidence which was tendered and placed before the tribunal by and on behalf of the Appellants herein.
20. In particular, Learned counsel for the Appellants has submitted that the Honorable tribunal failed to take into account that the 1st Appellant herein had been a tenant in the demised premises for more than 55 years; and hence in assessing and determining the rents payable, it was incumbent upon the tribunal to consider the length/duration for which the 1st Appellant had been in occupation of the premises.
21. On the other hand, Learned counsel for the Appellants has also submitted that the Honorable tribunal also disregarded and also failed to take into account the contents of the valuation report by and on behalf of the Appellants, which, inter-alia, highlighted the fact that the suit property was old, dilapidated and had fallen into substantial dis-repair.
22. Premised on the foregoing submissions, Learned counsel for the Appellants has thus implored the Honourable court to find and hold that the Appellants had placed before the Honourable court, plausible and sufficient material to warrant the interference with the decision of the tribunal.
23. Further and at any rate, Learned counsel for the Appellants has reminded the court that same [court] is seized of the requisite discretion to interfere with the decision of the tribunal and more particularly, where the decision by the tribunal is vitiated by mistake and/or misapprehension of facts; as well as disregard of the binding legal principles.



24. To buttress the foregoing submissions and essentially that the court has the requisite Jurisdiction to interfere with the findings and decision of a tribunal, Learned counsel for the Appellants has cited and quoted the decision in *Karibu House [1973] Ltd v Travel Bureau Ltd* (1976 – 80) KLR at page 152.

Respondent's Submissions:

25. The Respondent herein filed written submissions dated the 19th February 2024; wherein same has highlighted and canvassed two [2] salient issues for consideration by the Honourable court.
26. First and foremost, Learned counsel for the Respondent has submitted that the Respondent herein placed before the Honorable tribunal sufficient material to warrant the review, variation and or adjustments of the rents which were payable by the Appellants.
27. To start with, Learned counsel for the Respondent has invited the Honourable court to take cognizance of the contents of the Notice to alter the terms of the tenancy which was served upon the Appellants herein and which captured the various grounds upon which the variation of rents was premised and/or predicated.
28. Additionally, Learned counsel for the Respondent has submitted that over a duration of time, the Appellants herein had been paying fixed rents devoid of escalation and that such a practice was contrary to the standard commercial practices obtaining in the market, where rents are subject to escalation over a period of time.
29. Furthermore, Learned counsel for the Respondent has also submitted that prior to and before issuing the Notice to alter the terms of the tenancy, the Respondent herein commissioned and instructed a firm of registered valuers, namely, M/s Danco Ltd, to undertake valuation of the demised premises with a view to advising on the requisite rents in respect of the demised premises.
30. Premised on the foregoing, Learned counsel for the Respondent has therefore submitted that the Respondent herein placed before the tribunal sufficient material and basis, which warranted the review, variation and adjustment of the rents.
31. In a nutshell, Learned counsel for the Respondent has thus implored the Honourable court to find and hold that the Honorable tribunal proceeded to and exercise its discretion on the basis of credible material and in accordance with the provisions of Section[s] 9 [2] and 12(1) (b) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Chapter 301 Laws of Kenya.
32. Secondly, Learned counsel for the Respondent has submitted that in arriving at and rendering the findings pertaining to the rents due and payable, the tribunal took into account the relevant factors and material and thus the contention that the tribunal exercised its discretion improperly, are contended to be misleading and in any event, is misconceived.
33. As pertains to the requisite ingredients which must be taken into account in an endeavor to reach and/or arrive at reasonable rents, Learned counsel has cited and relied on, inter-alia, the holding in the case of *Kenya Credit Traders Ltd v James Kabugu Kuria* (2002)eKLR and *Karibu House (1973) Ltd v Travel Bureau Ltd* (1977)eKLR, respectively.
34. Finally, Learned counsel for the Respondent has submitted that even though the honorable court is vested with the requisite Jurisdiction to interfere with and/or vary the decision of the tribunal, such Jurisdiction must be exercised with due care, caution and necessary circumspection.
35. Furthermore, Learned counsel for the Respondent has submitted that whilst considering whether or not to interfere with the discretion of the tribunal, the Honourable court must take into account the



principles which were highlighted and elaborated upon in the case of *Mbogo & Another v Shah* (1968) EA at page 15.

36. Nevertheless, Learned counsel for the Respondent has submitted that the Appellants herein have neither established nor demonstrated any tangible basis, to warrant the interference with the decision of the tribunal, which decision was anchored on proper exercise of discretion.

Issues For Determination:

37. Having reviewed the Memorandum of Appeal, the Notice to terminate tenancy; and the Reference filed thereto; the evidence tendered before the tribunal as well as the written submissions filed by and on behalf of the Parties, the following issues do arise and are thus worthy of determination;
- i. Whether the Honorable tribunal erred in law in [sic] ignoring and/or disregarding the consent executed by the 1st Appellant and the Respondent as pertains to the monthly rent payable or at all.
 - ii. Whether the variation, alteration and/or adjustment of the monthly rents payable by the Appellants herein was premised on lawful and credible basis or otherwise.
 - iii. Whether the Appellants' have established and/or demonstrated [sic] the requisite grounds or at all, to warrant the interference with the decision of the honorable tribunal or at all.

Analysis And Determination:

Issue Number 1 Whether the Honorable tribunal erred in law in [sic] ignoring and/or disregarding the consent executed by the 1st Appellant and the Respondent as pertains to the monthly rent payable or at all.

38. The Appellants herein have raised, espoused and highlighted various grounds at the foot of the Memorandum of Appeal. Instructively, one of the pertinent ground[s] which has been canvassed touches on and/or concerns the allegation that the Honorable tribunal erred in disregarding a consent that was duly executed between the 1st Appellant and the Respondent herein.
39. Furthermore, Learned counsel for the Respondent has highlighted the ground pertaining to (sic) the consent which was [sic] entered into and executed on the 6th October 2022.
40. Arising from the foregoing, Learned counsel for the Appellants has contended that whenever a consent has been entered into and executed by the Parties, then it behooved the Honorable court [Tribunal] to adopt and endorse the consent and thereby give effect thereto.
41. Further and in addition, Learned counsel for the Respondent has submitted that despite the established and hackneyed position of the law pertaining to consent, the Honorable tribunal disregarded same and thus breached the ratio decidendi in the case of *National Bank of Kenya Ltd versus Pipeplastic Samkolit Kenya Ltd & Another* (2002)eKLR.
42. Despite the contestation[s] raised and highlighted by Learned counsel for the Appellants, it is common ground that the advocates for the respective Parties, namely, the Appellants' and the Respondent herein



appeared before the chairperson of the tribunal on the 22nd September 2022; and thereafter made representation[s] culminating into the endorsement of the following Orders;

“Case No. E466 of 2022 and E467 of 2022 be and hereby consolidated. BPRT E467 of 2022 will be the lead file both parties to file and serve their respective valuation reports and submissions within 28 days. Matter be mentioned on 31st October 2022”

43. There is no gainsaying that the Parties and/or advocates for the Parties herein took a position before the Honorable tribunal and which position was thereafter adopted and ratified by the tribunal. For coherence, it is the Parties who agreed to dispose of the dispute beforehand on the basis of valuation reports and thereafter written submissions.
44. To my mind, having taken the position which has been highlighted in the preceding paragraphs, the Appellants herein cannot now be heard to contend that there was [sic] a consent which was ignored and/or disregarded by the Honorable tribunal.
45. Secondly, it is not lost on this Honorable court, that if the Appellants herein were convinced that the dispute before hand had been compromised and/or adjusted in any manner whatsoever, then it behooves the Appellants to revert back to court vide a suitable application and, inter-alia, seek to vary the directions that had hitherto been granted and/or entered upon.
46. Nevertheless, it is common ground that the Appellants herein neither reverted to the tribunal nor filed any suitable application seeking entry and/or endorsement of any compromise. Consequently and in this regard, the Appellants herein are estopped from seeking to ventilating and canvass an issue which is at variance with the express and explicit position [representations] that was taken before the tribunal.
47. Suffice it to point out that I am in agreement with the finding and holding of the chairperson of the tribunal that the question of (sic) the consent, which was being introduced into the proceedings vide the affidavit of Jaithenda Kumar Luthra, [Deponent], was an after thought and in any event, contrary to the mutual position which had been agreed upon by the Parties and adopted by the tribunal.
48. Notwithstanding the foregoing, I have also had occasion to look at and examine (sic) the purported consent which the Appellants herein are seeking to highlight and/or ventilate.
49. Suffice it to point out that after examining the alleged consent, which has not been conceded to by the Respondent, it is evident that same was neither sanctioned nor entered into by the Respondent herein, which is a Cooperative society; and thus can only enter into and/or execute a consent [Contract], pursuant to and with the authority of the recognized organ of the said society.
50. In my humble albeit considered view, the Appellants herein who are seeking to rely upon the impugned consent bore the obligation of demonstrating that the impugned consent was indeed sanctioned by the authorized organ by the society. However, it is evident and apparent that the Appellants herein did not discharge the burden of proof or at all. [See the provisions of Sections 107, 108 and 109 of the Evidence Act, Chapter 80, Laws of Kenya].
51. Before departing from the issue herein it is imperative to underscore that the Respondent herein, like all other body Corporates, can only make decisions in the manner approved and/or envisaged under her constitution; or the Articles and Memorandum of Association, where appropriate.
52. To buttress the foregoing position, it suffices to cite, restate and reiterate the holding of the Supreme Court of Kenya in the case of Fanikiwa Limited versus Sirikwa Squatters Group & 95 others (Civil Appeal (Application) 45 of 2017) [2023] KESC 307 (KLR) (Judgment), where the court held as hereunder;



- [120] An additional reason as to why the two superior courts below ought to have accorded little weight to the letter from J. P. Hulme is that it is not clear whether the said J. P. Hulme had the sanction, competence or authority of Lonrho Agribusiness, a registered limited liability company to bind the company. In our view, there was insufficient evidence to support the claim that Lonrho Agribusiness intended to surrender the suit properties for the allocation to Sirikwa. This is a serious question that the two superior courts below did not address their minds to. It is elementary principle of company law that a company as a distinct legal entity from its promoters, directors or employees can only act through its organs and make decisions by resolutions. No resolution of the company's board supporting the purported purpose for the surrender was presented in evidence.
53. Arising from the foregoing, my answer to issue number one [1] is therefore threefold. Firstly, the advocates for the Parties' agreed to canvass and dispose of the reference before the tribunal by way of valuation report and written submissions and having adopted the said mutual position, same were bound.
54. Secondly, if for whatever its worth, the Appellants herein contended that the impugned consent was indeed legitimate [which is not the case], then it was incumbent upon the Appellants to revert back to court and seek to, inter-alia, review the directions which had hitherto been given by the court albeit with concurrence of the Parties'
55. Thirdly, it is imperative to point out and underscore that the document which is hyped by the Appellants as [sic] a consent, does not satisfy the Elementary principles envisaged by and under the law. Instructively, the impugned document cannot be held to have been executed by and/or with the authority of the Respondent, whatsoever.

Issue Number 2: Whether the variation, alteration and/or adjustment of the monthly rents payable by the Appellants herein was premised on lawful and credible basis or otherwise.

56. Other than the question of (sic) the consent which the Appellants contend to have been ignored and/or disregarded, the Appellants herein also contended that the variation, alteration or adjustments of the monthly rents was erroneous and predicated on improper exercise of discretion by the Honorable tribunal.
57. Furthermore, Learned counsel for the Appellants has also submitted that in arriving at the adjusted monthly rents, the Honorable tribunal adopted a slanted and skewed approach which disregarded and failed to take into account important factors [considerations], that ought to have guided the Honorable tribunal.
58. Pertinently, Learned counsel for the Appellants have impugned the decision by and on behalf of the tribunal by invoking and citing the decision in the case of *Margret Wanjiru Nduma & 3 Others v James Gichuki Gathara* (2020)eKLR and Tala Investment Ltd v Greenspot Ltd Civil Appel No 269 of 1993 (UR).
59. Other than the foregoing, the Appellants have also contended that the Honorable tribunal disregarded and/or ignored the contents of the valuation report that was filed on behalf of the Appellants and instead sought to be guided by the contents of the valuation report filed by the Respondent.
60. Premised on the foregoing, the Appellants herein have thus submitted that the variation and/or adjustment of the monthly rents payable by and on behalf of the Appellants was thus predicated on extraneous factors and inappropriate application of exorbitant costs per unit.



61. Notwithstanding the position taken by the Appellants herein, it is important to observe and underscore that the chair of the Honorable tribunal indeed took into account various perspectives and/or nuances prior to and or before arriving at the final monthly rents payable by and on behalf of the Appellants.
62. To start with, the Learned chair of the tribunal was privy to and/or knowledgeable of the principles to be adopted and deployed whilst undertaking assessment of rents. In any event, the chairperson of the tribunal duly appreciated the import and tenor of the provisions of Section 9(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Chapter 301 Laws of Kenya.
63. Furthermore, it is also evident from the ruling of the Honorable chair of the tribunal that same also took cognizance of the principles highlighted in the decision in *Margret Wanjugu Nduma & 3 Others v James Gichuki Gathara (2020)eKLR*.
64. Other than the foregoing, it is also not lost on this Honourable court that the chairperson of the tribunal also evaluated the contents of the valuation report[s] which had been filed by and on behalf of the respective Parties.
65. Notably, the chairperson of the tribunal observed that the valuation report which was filed by and on behalf of the Appellants was, inter-alia, scanty and lacking in material particulars.
66. To my mind, the observation by and on behalf of the chairperson of the tribunal as pertains the contents of the valuation report filed by and on behalf of the Appellants is credible, valid, objective and appropriate.
67. In any event, I have personally reviewed the contents of the valuation report filed by and on behalf of the Appellants; and have noted that same does not contain in the body thereof the comparable[s] which were utilized and involved in arriving at the proposed monthly rents. For coherence, at clause 12.0, the valuation report only speaks to the basis of the rental assessment.
68. Secondly, the comparable[s] which have been alluded to at the foot of the valuation report, by the Appellant's valuer are contained in the appendix and same alludes to five [5] buildings [comparables], whose locations have neither been captured nor provided.
69. Similarly, the purported comparable[s] also do not show the nature of business, [if any] being undertaken in the impugned comparable, whose locations, if at all is only known to the valuers and not otherwise.
70. Lastly, the valuation report by and on behalf of the Appellants is at variance with the reference[s] that were filed by and on behalf of the Appellants. Instructively, the Appellants herein have both confirmed that the suit property is situate on Biashara Street; and yet the impugned valuation report by and on behalf of the Appellants is contradictory in nature.
71. Pertinently, whereas the cover page of the Appellant's valuer report does confirm that the suit properties situate along Biashara Street, which corresponds with clause 1.0 however, in the body of the Report, the valuers have departed from the foregoing position and have contended that the suit property is situated [sic] along Tubman Lane.
72. At any rate, there is a serious contradiction in terms of the documentation filed by and on behalf of the Appellants herein as is discernable by contrasting the report[s] which have been tendered at pages 34 to 47 of the Record of Appeal as contrasted by the valuation report tendered vide pages 86 to 100 of the Record of Appeal.



73. Quite clearly, the Appellants herein presented to and or before the Honorable tribunal contradictory material, which the Honorable tribunal could not adopt and/or rely on.
74. To the contrary, the Respondent herein placed before the tribunal credible and comprehensive valuation report by M/s Danco Ltd, dated the 21st February 2022; and whose contents are comprehensive and well explained.
75. Further and in any event, the report presented by the Respondent alludes to various comparable[s] with the exact location being provided at the foot thereof for ease of verification, authentication and reference.
76. Like the chairperson of the tribunal, I am duly persuaded that the valuation report which was filed by and on behalf of the Respondent was credible, comprehensive and thus illuminating of the rental scenario derivable from the comparable properties situate on the same location.
77. To this end, I am of the view that the learned chairperson of the tribunal properly exercised his discretion in adopting and relying upon the valuation report tendered by and on behalf of the Respondent.
78. Consequently and in this regard, I do not discern and/or decipher any error, mistake and/or improper exercise of discretion, either as contended by the Appellants, or otherwise.
79. In a nutshell, my answer to issue number two [2] is therefore twofold. Firstly, the learned chairperson of the tribunal was abreast of the import and tenor of the provisions of Section 9(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Chapter 301 Laws of Kenya.
80. Secondly, the chairperson of the Honorable tribunal, duly evaluated and considered the competing valuation report[s] presented by the respective Parties and thereafter agreed with the report filed by and on behalf of the Respondent.
81. Lastly, the findings and holding underpinning the assessment of the rents payable by the Appellants herein, were well explained and thus legally sound. [See the ratio decidendi in *Tala Investment Ltd v Greenspot Ltd* Civil Appeal No. 269 of 1993 (UR)].

Issue Number 3 Whether the Appellants have established and/or demonstrated the requisite grounds or at all, to warrant the interference with the decision of the Honorable tribunal or at all.

82. To start with, it is imperative to state and underscore that assessment of rents by dint of the provisions of Section 9(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Chapter 301 Laws of Kenya is an exercise of discretion by the chairperson of the tribunal.
83. To the extent that assessment of rents is an exercise of discretion by and on behalf of the tribunal, it is therefore imperative to observe that any endeavor to interfere with an exercise of discretion must be informed by credible and plausible reasons and not otherwise.
84. Furthermore, there is no gainsaying that prior to and/or before an appellate court interferes with an exercise of discretion of a court of first instance, [in this case the tribunal], it must be shown and/or established that the impugned assessment was reached and/or arrived at by mistake of law, disregard of principles and/or otherwise misapprehension of a material fact.



85. Pertinently, the circumstances under which the tribunal’s assessment of rents may be interfered with and/ or impugned, were highlighted and elaborated upon in the case of *Karibu House (1973) Ltd versus Travel Bureau Ltd* [1977] eKLR, where the court stated as hereunder;

“An appeal court can interfere, it was agreed, with the tribunal’s assessment if it were reached by any (i) mistake of law; (ii) disregard of principle; (iii) misapprehension of fact; (iv) a consideration of irrelevant matters; (v) lack of exercise of a discretion; (vi) obviously unjust method; (vii) disregard of relevant matters; or (viii) undue regard for some factors and not enough for others; or a combination of some or all these eight points.”

86. Other than the foregoing decision, the circumstances under which the exercise of discretion by a court of first instance, maybe interfered with, were also highlighted and amplified in the case of *Mbogo versus Shab* (1968) E a page 93 in which De Lestang v (as he then was) observed at page 94.

“I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.

87. Having taken into account the limited and circumscribed circumstances where the discretion of a court of first instance, maybe interfered with, I beg to point out that I have neither discerned nor established any infraction or at all, to warrant the interference with the discretion of the tribunal.

88. To the contrary, it is my finding and holding that the chairperson of the tribunal properly and lawfully exercised his discretion in assessing and ultimately arriving at the reasonable rents payable by the Appellants over and in respect of the demised premises, taking into account the import of the provisions of Section 9[2] of the Act [Chapter 301, Laws of Kenya].

Final Disposition:

89. From the foregoing analysis, [whose details have been highlighted elsewhere hereinbefore], it is evident and apparent that the Appellants herein, were obligated to demonstrate improper exercise of discretion, but which same have indeed failed to establish same.

90. Consequently and in the premises, I come to the conclusion that the appeal beforehand, is devoid and bereft of merits. In this regard, same be and is hereby dismissed with costs to the Respondent.

91. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MARCH 2024.

OGUTTU MBOYA

JUDGE

In the Presence of;

Benson: Court Assistant

Ms. Diana Ngei h/b for Mr. James Tugee for the Appellants.

Ms. Sylvia Mwiruri h/b for Mr. Charles Kanjama [Sc] for the Respondent.

