



**Gee Tee Sons Limited v Mwangi (Environment and Land Appeal
E005 of 2022) [2024] KEELC 13971 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13971 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E005 OF 2022
BM EBOSO, J
DECEMBER 9, 2024**

BETWEEN

GEE TEE SONS LIMITED APPELLANT

AND

LYDIA WANJUE MWANGI RESPONDENT

*(Being an appeal against the orders issued by the Chairman – Business
Premises Rent Tribunal on 6/3/2020 in Nairobi BPRT Case No 83 of 2018)*

JUDGMENT

Introduction

1. This appeal challenges the Judgment of the Business Premises Rent Tribunal [referred to in this Judgment as “the Tribunal”] rendered on 6/3/2020 in Nairobi BPRT Case No 83 of 2018. The case in the Tribunal was expressed as a reference to the Tribunal by a tenant under Section 6 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) [referred to in this Judgment as “the Act”]. Lydia Wanjue Mwangi, the respondent in this appeal, was identified as the applicant in the reference which was dated 23/11/2018. M/s Gee Tee and Sons Limited, the appellant in this appeal, were identified as the respondent in the reference. The statutory form used to initiate the reference was Form B (r.5). However, in the body of the reference, M/s Gee Tee and Sons Limited were identified as the party who was initiating the reference in their capacity as landlord. Similarly, the reference was expressed as signed and presented by the said landlord. Lastly, the reference did not specify whether it was an objection to a notice of termination or tenancy or an objection to a notice of intended alteration of terms/conditions of tenancy. Neither of the two aspects of the statutory form was struck out. The above observations are important because they may raise the question of competency of the reference that culminated in this appeal.



2. The two key issues that fall for determination in this appeal are: (i) Whether the Tribunal accorded the parties a fair hearing on the issue before it before arriving at the impugned decision; and (ii) Whether the respondent proved her case to the required standard. Before I analyse and dispose the two issues, I will outline a brief background to the appeal.

Background

3. At all material times, the two parties to this appeal were in a controlled tenancy relationship in which the appellant was the landlord and the respondent was the tenant in relation to demised premises described as LR No 4953/93/V, Thika Town. The mutually agreed monthly rent for the demised premises was kshs 190,000 per month. Vide a statutory notice dated 26/9/2018, the respondent/tenant served a notice of her intention to obtain a re-assessment of rent “from Kshs 190,000 to Kshs 50,000.” Subsequent to that, the appellant/landlord initiated a reference in the Tribunal by presenting Form B (r5) as opposed to Form B1 (r5). The presented statutory form relates to a reference by a tenant as opposed to a reference by a landlord. The other anomalies in the reference have been captured in the opening paragraph of this Judgment. Suffice it to state that, it does appear from the original record of the Tribunal that it did not detect the above anomalies.

4. Parties appeared before the Tribunal on 11/2/2019 when the Tribunal issued the following verbatim orders:

“Order

1. The tenant shall file and serve a valuation report within 45 days from the date hereof in default the Tenant’s notice dated 26th September 2018 shall be dismissed with costs to the landlord.
2. The tenant shall pay the advocate for the landlord costs of Shs 4100 before the hearing date.
3. Hearing on 10th May 2019.”

5. The Tribunal did not deal with the reference on 10/5/2019. Parties subsequently appeared before the Tribunal on 22/5/2019 when the Tribunal made the following verbatim order:

“Orders

1. The Landlord shall formally serve the valuation reports and serve the advocate of the Tenant within 30 days.
2. The valuers of both parties shall attend the Tribunal and give in respect of their valuation reports. (sic)
3. Hearing on 23rd October 2019 at 11.30 a.m.

6. Hearing did not take off on 23/10/2019. On that day, the Tribunal issued the following orders relating to hearing of the reference:

“Order

1. Hearing on 3rd February 2020.
2. The valuers of both parties to be present to give evidence.”



7. On 6/3/2020, Monyangi Advocate appeared for the tenant/ respondent while Ms Waceke Advocate held brief for Owino for the landlord/appellant. Ms Waceke informed the Tribunal that Owino was unwell. Counsel for the respondent opposed the application for adjournment. The record of the Tribunal does not, however, bear grounds of opposition. The Tribunal rejected the application for adjournment. The record of the Tribunal does not bear reasons for the decision rejecting the plea for adjournment. All that the Tribunal said on the plea is contained in one sentence which reads as follows:

“The application for an adjournment is rejected”.

8. The Tribunal convened to hear the reference at 3 p.m. At that point, Tom Kabau held brief for Mrs Owino for the landlord/ appellant while Monyangi appeared for the tenant/ respondent. All that the original record of the Tribunal bears is the presentation by counsel for the tenant /respondent which reads as follows:

“The tenant’s valuer is in court. I pray the tenant’s valuer’s report be adopted. The landlord has been given ample time to prepare the valuation report and they have not done so.”

9. Without hearing from the appellant’s advocate; without conducting any hearing; and without receiving any evidence in the reference, the Tribunal proceeded to render the following verbatim one page Judgment:

“Judgment

The Tribunal has perused all the pleadings in this matter. The attendance of the Landlord in respect of this matter has been very casual. The Landlord has not filed any valuation report as ordered by the Tribunal. The Tenant has filed the valuation report which is unchallenged. The recommended monthly rent is shs 85,000. The Tribunal has no option but to adopt the Tenant’s valuation report in the circumstances of this case.

The Tribunal makes the following determination of the reference.

Orders

1. The rent payable by the Tenant is assessed at shs 85,000 exclusive VAT with effect from 1st December 2018.
2. The Landlord shall pay the Tenant costs of reference.
3. Costs shall be agreed or taxed by the Tribunal.
4. A copy of this order shall be served upon th advocate for the Landlord and the Landlord by a Court Process Server within 7 days from the date hereof.

Judgment dated and delivered this 6th day of March 2020 in the presence of Monyangi for the Landlord. Tom Kabau holding brief for Mrs Owino for the Landlord.”

10. Aggrieved by the above Judgment, the appellant sought an enlargement of time and subsequently brought this appeal advancing the following five (5) grounds:
1. That the learned trial chairperson erred in law and in fact without considering the facts or ground occasioning the sought out adjournment by counsel for the appellant on the 6th March 2020 which were medical in nature thereby arriving at an unjustified decision.



2. That the learned trial chairperson erred in law and in fact by entering summary judgment in the matter reducing rental income from kshs 190,000 to kshs 85,000 without hearing any of the parties, any evidence or cross examination and evidence, calling makers of any evidence thereby did a grave error occasioning injustice on the appellant thereby arriving at unjustified decision.
 3. That the learned trial chairperson erred in law and in fact by decreeing that the said sum of kshs 85,000 would be backdated to December 2018 without listening to any of the parties or giving reason for such holding or finding thereby arriving at a wrong finding.
 4. That the learned trial chairperson erred in law and in fact by failing to consider assessment report by the appellant and only considered the report by the respondent and was duly swayed by the respondent's report without his own independent decision and did not give reasons for such finding in reducing rent thereby arriving at a gravely wrong decision.
 5. That the learned trial chairperson erred in law and in fact in failing to balance between the rights of the landlord and the tenant and was solely swayed by the respondent's arguments rather than both parties' arguments and failed to give justifications for such consideration thereby arriving at a wrong finding/ decision.
11. The appellant urged this court to allow the appeal and set aside the impugned award of the Tribunal. Further, the appellant urged the court to decree the respondent to pay rent "to the tune of Kshs 250,000 inclusive of all arrears."

Appellant's Submissions

12. The appeal was canvassed through written submissions dated 8/10/2024, filed by M/s Kanyi Kiruchi & Co Advocates. Counsel for the appellant identified the following as the three key issues that fell for determination in the appeal: (i) Whether the respondent proved her case to occasion /justify the rent reduction; (ii) Whether the appeal is merited; and (iii) What order should be made in relation to costs of the appeal.
13. Counsel submitted that there was no evidence justifying rent reduction. Counsel argued that parties to the tenancy had entered into a contractual relationship and mutually agreed on a monthly rent of Kshs 190,000. Counsel added that there was no evidence tendered to prove the allegation that other tenants in premises were paying less amounts. Counsel faulted the Tribunal for rendering a judgment that "lacked reasons". Counsel further faulted the Tribunal for backdating the reduced rent, adding that there were no reasons given for the decision to backdate the reduced rent. Counsel argued that there were many questions as to the fairness and impartiality of the impugned decision, adding that no evidence was tendered before the Tribunal to warrant grant of the orders.
14. On whether the appeal has merit, counsel pointed out that the Judgment of the Tribunal was bereft of reasons hence it should not stand. Counsel added that the Tribunal unfairly denied the appellant the opportunity to interrogate the valuation report and to be heard on the dispute. Counsel urged the court to award costs of the appeal to the appellant.



Respondent's Submissions

15. The respondent opposed the appeal through written submissions dated 22/10/2024, filed by M/s Nzaku & Nzaku Advocates. Counsel for the respondent identified the following as the two issues that fell for determination in the appeal: (i) Whether the appeal is merited; and (ii) Who should bear costs of the appeal.
16. On whether the appeal is merited, counsel for the respondent submitted that the main issue to be determined was whether the Tribunal adopted the right procedure in the way the Chairman proceeded on 6/3/2020. Counsel faulted the appellant for not attending the Tribunal at 3 p.m, adding that no reason had been given for their absence. Counsel added that the appellant had tendered a valuation report to the Tribunal by causing the report to be filed as directed by the Tribunal on 7/8/2019. Counsel argued that since only the respondent had filed a valuation report, the Tribunal was obliged to rely on the said report as uncontroverted evidence.
17. Citing Section 12(1) of the Act and Section 107 of the *Evidence Act*, counsel for the respondent submitted that because the appellant was absent at 3 p.m and had not filed a valuation report, the Tribunal employed the correct procedure in disposing the dispute. Counsel argued that the impugned Judgment was “very enlightening especially as regards the conduct of the landlord (appellant) before the Tribunal,” adding that the Tribunal had noted that the appellant was casual.
18. Counsel disputed the contention that there was no justification for reducing the monthly rent from Kshs 190,000 to Kshs 85,000 adding that the appellant failed to present a valuation report to help the court arrive at a reasonable assessment of rent. On the backdating of the reduced rent, counsel relied on Section 4(3) and 9(1)(a) of the Act and on the decision in *Birindetti Singh Limited v Pioneer General Assurance Society* [2007]eKLR. Counsel argued that the respondent having issued her notice on 26/9/2018, the Tribunal was justified in backdating the reduced rent to 1/12/2018. Counsel urged the court to dismiss the appeal.

Analysis and Determination

19. The Court has read and considered the original record of the Tribunal, the record filed in this appeal, the grounds of appeal and the parties' respective submissions in the appeal. The court has also considered the relevant legal frameworks and jurisprudence. The following are the two key issues that fall for determination in the appeal: (i) Whether the Tribunal accorded the parties a fair hearing on the issues before it prior to arriving at the impugned Judgment; and (ii) Whether the respondent proved her case to the required standard. Before I dispose the two issues, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.
20. Did the Tribunal accord the parties a fair hearing on the dispute before it prior to rendering the impugned Judgment? The right to a fair hearing is a constitutional dictate that is enshrined in Article 50 of *the Constitution* which provides as follows:
 - “(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
21. The reference giving rise to this appeal was scheduled for hearing on 6/3/2020. The Tribunal had previously issued hearing directions requiring parties' respective valuers to attend court and tender their respective rent valuations. The record of the Tribunal does not bear any hearing relating to production and admission of any valuation report. It does not bear record of any opportunity accorded



to the appellant's advocate who was present to cross-examine the author of the report. It does not bear record of any opportunity accorded to the parties to tender submissions on the valuation report or in the matter generally.

22. The full record of the Tribunal for 6/3/2020 reads as follows:

“06.03.2020

Before Hon Mbichi Mboroki – CM

Kalolia – Court Assistant

Monyangi for the Tenant

Miss Waceke holding brief for

Owino for the Landlord

Waceke: Mr Owino is unwell

Miss Monyanghi: I object the adjournment

Tribunal

The application for adjournment is rejected.

At 3pm

Monyangi for the Tenant

Tom Kabau holding brief for Mrs Owino for the Landlord

Landlord absent

Monyangi: The Tenant's valuer is in court. I pray that the Tenant's valuer's report be adopted. The Landlord had been given ample time to prepare the valuation report and they have not done so.

Mbichi Mboroki

Chairman

Business Premises Rent Tribunal

Judgment

The Tribunal has perused all the pleadings in this matter. The attendance of the Landlord in respect of this matter has been very casual. The Landlord has not filed any valuation report as ordered by the Tribunal. The Tenant has filed the valuation report which is unchallenged. The recommended monthly rent is shs 85,000. The Tribunal has no option but to adopt the Tenant's valuation report in the circumstances of this case.

The Tribunal makes the following determination of the reference.

Orders

1. The rent payable by the Tenant is assessed at shs 85,000 exclusive VAT with effect from 1st December 2018.
2. The Landlord shall pay the Tenant costs of reference.
3. Costs shall be agreed or taxed by the Tribunal.



4. A copy of this order shall be served upon the advocate for the Landlord and the Landlord by a Court Process Server within 7 days from the date hereof.

Judgment dated and delivered this 6th day of March 2020 in the presence of Monyangi for the Landlord. Tom Kabau holding brief for Mrs Owino for the Landlord.”

23. It is clear from the above verbatim record of the Tribunal that neither the appellant nor the respondent was accorded the opportunity to present their respective evidence and to cross-examine witnesses. The valuation report which the Tribunal relied on had neither been produced by the author nor been availed for interrogation through cross-examination of the author. For the above reasons, this court finds that the parties to the dispute that was before the Tribunal were not accorded a fair hearing on the issue before the Tribunal prior to the Tribunal rendering the impugned Judgment.
24. It follows from the above analysis and finding that the respondent was not accorded the opportunity to prove her case despite her being present and despite her availing to the Tribunal the author of the valuation report she was relying on. For no omission on her part, she did not present her evidence. She was denied the opportunity to prove her case through evidence. That is the finding of the court on the second issue.
25. For the above reasons, the court finds that this appeal is merited. The appeal is allowed in the following terms:
 - a. The Judgment rendered by the Business Premises Rent Tribunal in Nairobi BPRT Case No 83 of 2018 is hereby set aside wholly on the ground that both the landlord and the tenant were not heard in the dispute.
 - b. The dispute is remitted to the Tribunal for disposal in accordance with the requirements of Article 50 of *the Constitution*.
 - c. Parties will bear their respective costs of this Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 9TH DAY OF DECEMBER 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Kanyi for the Appellant

Mr Muriithi for the Respondent

Court Assistant: Hinga

