

REPUBLIC OF KENYA

IN THE BUSINESS PREMISES RENT TRIBUNAL AT KAKAMEGA

TRIBUNAL CASE NO. E064 OF 2025

BETWEEN

JASHPALSINH N.

GOHIL.....TENANT/RESPONDENT

AND

KHALIFA SALIM & AHMED

SALIM.....LANDLORDS/APPLICANTS

JUDGEMENT

A. INTRODUCTION

1. This is a considered judgement in respect of a reference and counterclaim touching on a business tenancy over the premises known as Kakamega Municipality Block II/21 within Kakamega Town. The dispute arises out of a notice by the Landlords, Ahmed Salim and Khalifa Salim, seeking to alter the terms of the tenancy and to recover alleged rent arrears, and the Tenant's opposition thereto.
2. The matter has elicited a substantial body of documentary and oral evidence spanning a period of two decades, and the Tribunal has been called upon to interrogate, in depth, the genesis of the parties' relationship, the contractual instruments relied upon, and the applicable principles of landlord and tenant law, evidence, and contract.
3. For ease of appreciation, the Tribunal will first set out the procedural history and documentary trail in chronological order before distilling the issues for determination and engaging in a

detailed legal analysis. In doing so, the Tribunal is guided by the duty imposed under section 12(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301, to investigate any complaint relating to a controlled tenancy and to make such orders as it deems fit having regard to all the circumstances of the case.

4. The starting point is the written Tenancy Agreement dated 11th January 2005 executed between the Landlords and the Tenant. Under that instrument, the Landlords agreed to let, and the Tenant agreed to take, the business premises on the ground floor of a building described as Shop Building B11/21 in Kakamega at a monthly rent of Kenya Shillings Seventeen Thousand (Kshs 17,000), payable quarterly in advance, with an increment of ten per cent (10%) every two years. The term of the lease was expressly stated to be five years commencing on 1st February 2005. The agreement further imposed various obligations upon the Tenant, including punctual payment of rent, observance of user clauses, and responsibility for certain utilities, while the Landlords undertook obligations relating to insurance, structural repairs and quiet enjoyment.

5. The said written tenancy is duly signed by the Tenant, by Ahmed Salim and Khalifa Salim on behalf of the landlord family, and is witnessed in the usual manner. The Tribunal notes that this agreement satisfies the requirements of section 3(3) of the Law of Contract Act in so far as it relates to disposition of an interest in land; it is in writing, signed by the parties, and properly attested.

6. It is therefore a valid and enforceable contract, and absent a lawful variation, it is in law the primary instrument governing the parties' rights and obligations. The principle that courts and tribunals will enforce, and not rewrite, freely negotiated contracts is settled in authorities such as *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, where the Court of Appeal emphatically held that a court of law cannot rewrite a contract between parties but must give effect to the bargain as struck.

7. Shortly after the execution of the written lease, the landlord family addressed a letter dated 24th March 2005 to the Tenant. In that letter, which is on the letterhead of "Salim Mohammed Family" and is signed by both Ahmed Salim and Khalifa Salim, the family notified the Tenant that Ahmed Salim would thenceforth be the only person authorised to collect rent on behalf of the family in respect of the subject premises. The tenor of the letter is purely administrative; it does not purport to alter the duration of the tenancy, the rent payable or the increment clause. Its legal effect was to designate a contact person for purposes of rent collection and communication. This Tribunal therefore finds that the letter of 24th March 2005 did not in any way rescind or vary the written lease of 11th January 2005; rather, it was ancillary to and consistent with that lease.

8. It is common ground that after the commencement of the tenancy, the Tenant took possession and commenced business in the premises. Contemporaneous with the early period of occupation, the Tenant alleges that on 12th May 2005, a further handwritten agreement was made between himself and Ahmed Salim. This document, which the Tenant has dubbed the "Forever Agreement", is written on a sheet of paper in non-formal language. It purports to

reduce the monthly rent to Kshs 15,000, payable from July 2005, to last for twenty years, and states that the landlords would not in future increase rent and would not let the shop to anyone else. It further states that by virtue of this new arrangement “our previous agreement goes cancelled”, referring to the written lease of January 2005. The document bears what is said to be the signature of Ahmed Salim and that of the Tenant, and indicates one Saleh Musa Musungu as a witness.

9. The Tenant’s case is built largely around this handwritten document. In his witness statement dated 9th June 2025, he asserts that the written lease of 11th January 2005 was “cancelled” by mutual consent and that the parties agreed to a fresh arrangement embodied in the Forever Agreement. He avers that pursuant to the alleged new agreement he has, since 2005, religiously paid rent in advance to the Landlords and that he has in fact paid rent up to December 2044, amounting to Kshs 3,978,000. He further asserts that the Landlords acknowledged such advance payments by issuing receipts and never raised any complaint regarding arrears until 2025 when the present dispute arose.

10. Alongside his witness statement, the Tenant filed and relied upon a List of Documents dated 9th June 2025, a Further List of Documents dated 23rd May 2025, and a Supplementary List of Documents dated 17th July 2025. These lists attach a voluminous bundle of rent receipts issued from the year 2005 to various future years, including receipts in the name of “Gohil Bookshop” issued by Ahmed Salim and by the entity “Salim and Sons”. The Tribunal has painstakingly perused these receipts. They indicate payments in varying amounts, many being Kshs 51,000 allegedly representing

rent for three months at Kshs 17,000 per month, and later receipts of Kshs 204,000 allegedly representing rent for twelve months in advance. The Tenant relies on these documents to demonstrate both continuous payment and the Landlord's acceptance of advance rent.

11. The Tenant also produced correspondence exchanged between the parties' advocates in early 2025. A demand letter from K.N. Wesutsa & Co Advocates dated 18th February 2025, written on behalf of the Landlords, recites the existence of the written tenancy of 11th January 2005 at a monthly rent of Kshs 17,000 with a 10% increment every two years and contends that the Tenant has persistently failed to honour the increment, thereby accruing arrears calculated at Kshs 2,476,216. The letter threatens to terminate the tenancy and to institute proceedings if the Tenant does not remedy the breach. The Tenant's advocates, Lilian Amere Machio & Co Advocates, responded by a letter dated 20th February 2025, denying the existence of any arrears and asserting that the Tenant had paid rent up to the year 2038 in advance, attaching copies of receipts and referring to an amended agreement of 12th May 2005.

12. The Landlords' advocates replied on 25th February 2025, indicating that their clients had no recollection of having entered into any revised tenancy agreement and calling upon the Tenant to furnish copies of such alleged agreement and supporting documents before they could "consider any other legal measure at their disposal". The Tenant's advocates then addressed a detailed rejoinder dated 4th March 2025, maintaining their client's position that rent had been paid up to 2038, reiterating reliance on the

Forever Agreement, and annexing further receipts. This correspondence is important because it demonstrates that, prior to the filing of the present proceedings, the parties had squarely joined issue on whether there existed a valid variation of the 2005 lease and whether any rent arrears were outstanding.

13. Parallel to that advocate correspondence, the Landlords took formal steps to terminate or alter the tenancy. They issued a statutory notice in Form A under section 4(2) of Cap 301 dated 26th March 2025, in which they described themselves as the Landlords of the premises known as Kakamega Municipality Block II/21 and gave notice to the Tenant that they intended to terminate or alter the terms of the tenancy with effect from 1st June 2025. The grounds cited in the notice were that the Tenant had refused to pay rent and had rent arrears of Kshs 2,476,216, and that efforts to recover the arrears had failed. The notice sought orders compelling payment of all arrears and vacation of the premises.
14. Upon being served with the statutory notice, the Tenant moved the Tribunal by a reference in Form B dated 22nd April 2025, filed through his advocates, opposing the notice. In that reference he reiterated that he had paid rent in advance up to the year 2038 in the sum of Kshs 2,720,000, that the Landlords had acknowledged receipt thereof by issuing receipts, that the Landlords had never previously complained about arrears, and that in any event the Tribunal lacked jurisdiction on the basis that the tenancy had exceeded the statutory threshold of five years and three months for a controlled tenancy under Cap 301.
15. Simultaneously the Tenant filed various lists of documents and his witness statement. The effect of the reference was to suspend

the operation of the notice under section 6 of Cap 301 pending determination by the Tribunal.

16. The Landlords in turn filed a witness statement by Ahmed Salim dated 22nd July 2025. In that statement he confirmed the existence of the written tenancy of 11th January 2005 at a monthly rent of Kshs 17,000 with 10% biennial increments. He deposed that the Tenant had persistently refused to honour the increments and that the arrears of such increments stood at Kshs 2,476,216. He further deposed that the alleged Forever Agreement of 12th May 2005 was a forgery; that his brother, the first Landlord, did not sign it; that he himself did not sign it; that the handwriting on the document was not his; and that he first saw the document upon the filing of the present case. He also contended that certain rent receipts produced by the Tenant, particularly those purporting to cover the years 2021 to 2023 and 2039 to 2044, were forged and that he first encountered them in the Tribunal file.

17. The matter proceeded to hearing. On 19th August 2025 the Tenant testified and adopted his witness statement, produced the tenancy documents and receipts, and was extensively cross-examined. The record shows that he maintained the authenticity of the Forever Agreement and insisted that he had paid rent diligently and in advance, asserting that if there were any gaps in receipts, it was because some receipts had been misplaced. He conceded that the alleged Forever Agreement was not signed by the co-landlord, Khalifa Salim, but stated that Ahmed Salim had authority from the family to sign on behalf of all. He also conceded that he had not sought independent verification of the handwriting or signature on the document. After closing his case, the Landlords' case was heard

on 23rd September 2025 when Ahmed Salim testified and was cross-examined.

18. Upon conclusion of viva voce evidence, parties filed written submissions. The Landlords' submissions, filed through K.N. Wesutsa & Co Advocates, framed the issues as including whether the written lease of 11th January 2005 governed the tenancy, whether the Forever Agreement was valid, whether the Tenant had complied with the lease regarding rent increments, and whether the Landlords were entitled to arrears and termination. They argued, relying on authorities such as National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd and Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd [2017] eKLR, that a court cannot rewrite a contract and that the Tenant was bound by the express rent increment clause. They also invoked sections 107 to 109 of the Evidence Act on burden of proof and cited authorities such as Kinyanjui Kamau v George Kamau [2015] eKLR and R.G. Patel v Lalji Makanji [1957] EA 314 to submit that allegations of forgery and fraud must be strictly proved to a standard slightly above a balance of probabilities.

19. The Tenant's submissions, filed through Lilian Amere Machio & Co Advocates, emphasised the period of occupation, the alleged Forever Agreement, and the evidence of numerous receipts showing advance rent payment up to 2044. They argued that by virtue of the Forever Agreement, the tenancy was for twenty years at a fixed rent of Kshs 15,000 without increment, that the Tenant had fully complied by paying rent in advance, and that the Landlord's claim for arrears was baseless. They further argued that, because the tenancy had long exceeded five years, the Tribunal lacked

jurisdiction, relying on the definition of a controlled tenancy in section 2 of Cap 301 and certain authorities of the superior courts on jurisdiction.

20. Against that detailed factual and procedural background, the Tribunal now turns to the issues for determination. In doing so, it remains cognizant of the principle that the party who asserts must prove, as codified in sections 107, 108 and 109 of the Evidence Act. The burden of proof lies on he who alleges a fact, and it is only when a prima facie case is established that the evidential burden shifts. The Tribunal is also guided by the standard of proof in civil cases, namely the balance of probabilities, save that where allegations of fraud or forgery are made, the authorities have insisted on a degree of proof that, whilst not as high as beyond reasonable doubt, is commensurately higher than in an ordinary civil claim.

B. ISSUES FOR DETERMINATION & ANALYSIS

I. The first issue is that of jurisdiction.

21. Jurisdiction is everything; without it, a court or tribunal must down its tools. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act creates this Tribunal and circumscribes its jurisdiction to disputes relating to controlled tenancies.

22. Section 2 defines a controlled tenancy, in relevant part, as a tenancy of a shop, hotel or catering establishment which has been reduced into writing and which is for a period not exceeding five years or contains provision for termination otherwise than for breach within five years from the commencement thereof. The written tenancy of 11th January 2005 is for a period of five years.

Prima facie, therefore, it squarely fell within the statutory definition and attracts the jurisdiction of this Tribunal.

23. The Tenant's argument that the Tribunal lacks jurisdiction is predicated on the premise that the Forever Agreement validly converted the relationship into a twenty-year fixed term tenancy at a lower rent. It follows that the jurisdictional question is inexorably intertwined with the validity or otherwise of that document.
24. If valid, the tenancy would indeed cease to be controlled and jurisdiction would lie with the Environment and Land Court. If invalid, the original five-year written lease remains the governing instrument and the tenancy is controlled. This Tribunal has therefore adopted the analytical route reflected in what the parties and their counsel referred to as Option A2; namely, that jurisdiction must be determined by first pronouncing upon the validity of the purported variation.
25. Turning to the validity of the Forever Agreement, the Tribunal notes that the law recognises that parties to a contract may vary their agreement by a subsequent contract, provided that such variation satisfies the usual contractual requirements. However, where a contract relates to an interest in land and is required by statute to be in writing and signed by the parties, any material variation of essential terms such as rent, duration or identity of the parties must also be in writing and signed by or on behalf of all the parties to be affected. This is implicit in section 3(3) of the Law of Contract Act and has been affirmed in authorities such as *Eldo City Limited v Corn Products Kenya Ltd* [2013] eKLR.

26. In the present case, the Forever Agreement is not signed by one of the co-landlords, Khalifa Salim, who was an express party to the original lease. The Tenant sought to argue that Ahmed Salim had authority to bind his brother and the family. However, no power of attorney, agency resolution or other documentary proof of such authority was produced.
27. In the absence of such proof, this Tribunal cannot assume that Ahmed Salim had unilateral power to extinguish the rights of his co-landlord in a long-term commercial tenancy. The principles in the law of agency require that where one person alleges that another had authority to bind a third party, the burden is on the alleging party to prove such authority. This is consistent with section 109 of the Evidence Act, which places the burden on a party in whose knowledge a particular fact lies.
28. Moreover, the alleged Forever Agreement is in stark contradiction with the written lease. It purports, in casual language, to cancel the entire formal agreement and to introduce substantially different terms, a lower rent, a longer duration, and an undertaking never to increase the rent. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd* and *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd*, the Court of Appeal cautioned that courts must be slow to infer sweeping variations of written commercial contracts in the absence of clear, cogent evidence. In commercial dealings, parties are presumed to intend certainty and formal documentation of material terms.

29. The Tribunal further observes that the authenticity of the Forever Agreement was vigorously challenged by Ahmed Salim, who denied both the handwriting and the signature thereon. Where the authenticity of a document is in issue, the party relying on it bears the burden of proving that it is genuine. The applicable principles are well captured in *Kinyanjui Kamau v George Kamau* [2015] eKLR, where the Court of Appeal held that allegations of forgery and fraud must not only be pleaded with particularity but must be proved to a standard higher than on a balance of probabilities, though not beyond reasonable doubt. Likewise, in *R.G. Patel v Lalji Makanji* [1957] EA 314, the former Court of Appeal for Eastern Africa stated that the standard of proof required in fraud is one of cogent evidence that would convince a court that the allegation is more probable than not.

30. The Tenant in this case did not call any handwriting expert or any other person familiar with Ahmed Salim's signature to authenticate the document. The alleged witness, Saleh Musa Musungu, is deceased and no evidence from his estate or associates was adduced. The Tenant conceded that he had no independent verification of the signatures beyond his own assertion. In the circumstances, the Tribunal finds that the Tenant has fallen far short of discharging the heightened burden of proof required to establish that the Forever Agreement was genuinely executed by Ahmed Salim with authority from his co-landlord and with the intention of cancelling the formal lease.

31. The Tribunal is also not persuaded by the argument that the Landlords' long silence and acceptance of rent constitute ratification or estoppel preventing them from denying the Forever Agreement.

First, the receipts produced by the Tenant do not unequivocally show that rent was being tendered at Kshs 15,000 as claimed. Many of the receipts clearly show sums such as Kshs 51,000 which, on the Tenant's own admission, represent rent at the old rate of Kshs 17,000 per month for three months.

32. Secondly, the doctrine of estoppel cannot operate to override clear statutory requirements that contracts concerning land be in writing and signed by the parties. This principle emerges from decisions such as *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR, where the Court of Appeal held that while equity will sometimes come to the aid of a party, it cannot be invoked to circumvent express legal provisions.

33. In light of the foregoing, this Tribunal finds and holds that the Tenant has failed to prove, on the requisite standard, that the Forever Agreement of 12th May 2005 was validly executed by or on behalf of both Landlords or that it was intended to rescind the written lease of 11th January 2005. The document is, at best, an unperfected memorandum of intended discussion; at worst, it is a forgery. Either way, it is not enforceable in law. Accordingly, the relationship between the parties remained governed by the written tenancy of 11th January 2005, with its five-year term and its clause for a ten per cent rent increment every two years.

34. Having so found, the jurisdictional objection by the Tenant necessarily collapses. The tenancy is a written lease for a term not exceeding five years and thus falls squarely within the definition of a controlled tenancy in section 2 of Cap 301. The Tribunal therefore affirms, in line with Option A2 as framed by counsel, that it has

jurisdiction to hear and determine this dispute. Authorities such as *Beatrice Nduta Wairimu v Business Premises Rent Tribunal & Another* [2017] eKLR underscore that the Tribunal is the primary forum for such disputes and that parties cannot oust its jurisdiction by their own unilateral characterization of the tenancy.

II. The next issue concerns rent arrears

35. Section 52(1) & (2) of the now repealed Registered Land Act, Cap 300, Laws of Kenya provides as follows: -

“52. (1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the determination of the lease, he shall, subject to any written law governing agricultural tenancies and in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease, so far as those conditions are appropriate to a periodic tenancy.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the determination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.”

36. Section 107(1) of the Land Registration Act, 2012 provides as follows:

“107. Savings and transitional provisions with respect to rights, actions, dispositions:

(1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, where any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.”

37. Based on the foregoing provisions of the two statutes, the periodic lease entered into ought to be governed by the terms agreed upon by the parties and the rental increment ought to apply on the anniversary of every two years.
38. The Landlords contend that by failing to implement the ten per cent biennial increments stipulated in the lease, the Tenant fell into arrears that have accrued to Kshs 2,476,216. The Tenant counters that he has paid all rent, indeed in advance up to 2044, and that no arrears exist. The burden again lies on the Landlords to prove the arrears they claim, in line with the principle that he who alleges must prove. However, once a landlord shows the contractual rate of rent and demonstrates non-payment or underpayment, the evidential burden shifts to the tenant to show that he has paid or that the underpayment is justified.
39. The Tribunal has analyzed the written lease, which clearly stipulates that rent would be subject to a ten per cent increase every two years. This term is not ambiguous. Applying the principle in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd*, the Tribunal must give effect to that clause unless the parties validly varied it. There having been no valid variation, the Tenant was contractually obliged to pay rent at the incremented rates from 2007 onwards. His admission that he continued to pay rent at the base rate of Kshs 15,000 without increments is, by itself, sufficient evidence of breach of that term.

40. The Tribunal has also scrutinised the receipts produced by the Tenant. While they demonstrate that some payments were indeed made, often in lump sums covering several months, they do not demonstrate that the Tenant ever paid rent at the increased rates. On the contrary, the figures are consistent with unincremented rent. There are also notable gaps in the chronology of receipts, including periods where no receipts were produced at all. The Tribunal is alive to the principle that he who alleges payment bears the burden of proving it, particularly where the payment would discharge an admitted contractual obligation. This principle is captured in section 112 of the Evidence Act and in authorities such as *Mbuthia v Jimba Credit Finance Corporation Ltd* [1988] eKLR.

41. The Landlords' computation of arrears, which was not seriously challenged by a counter-schedule from the Tenant, is premised on applying the agreed ten per cent biennial increments to the base rent from 2007 onwards and comparing that schedule with the actual sums paid by the Tenant. On the evidence before it, the Tribunal is satisfied that such computation is fair and accords with the contract. The Tenant had the opportunity to produce his own computation demonstrating that, even with increments, he was not in arrears; he failed to do so. In those circumstances, and guided by the authority of *Hahn v Singh* [1985] KLR 716, which held that special damages must not only be specifically pleaded but also strictly proved, the Tribunal is satisfied that the Landlords have specifically pleaded and adequately proved rent arrears in the sum of Kshs 2,476,216.

42. The Tenant's reliance on alleged advance payments up to 2044 does not assist him. First, many of the receipts for distant future years were specifically challenged by the Landlords as forgeries. Although the Landlords did not call a handwriting expert, they did plainly deny the issuance of those receipts, thereby shifting the evidential burden back to the Tenant to establish their genuineness. He did not discharge that burden. Secondly, even if the receipts were genuine, advance payment at an unincremented rate cannot extinguish the obligation to pay at the incremented rate where the contract clearly so provides. Commercial parties cannot, by unilateral action, convert a variable rent lease into a fixed rent lease without a valid variation instrument.

43. The cumulative effect of the foregoing analysis is that the Tenant is in substantial arrears of rent under the lease. Persistent failure to pay rent or to comply with express contractual obligations is recognised in Cap 301 as a legitimate ground for termination of a controlled tenancy. Section 7(1)(b) provides that a landlord may terminate such tenancy on the ground that the tenant has defaulted in paying rent due. The Tribunal is therefore satisfied that the Landlords' ground for termination, as set out in their statutory notice of 26th March 2025, is well founded in both fact and law.

III. A further issue that has loomed large in this dispute is the credibility of the parties

44. Credibility is central to fact-finding, especially where documents are contested and where the Tribunal must choose between competing narratives. Having observed the demeanour of the witnesses and evaluated their evidence against the documentary

record, the Tribunal finds, in line with what counsel referred to as Option D2, that the Tenant's credibility is substantially impeached.

45. The Tenant's insistence on the validity of the Forever Agreement, in the face of obvious defects such as lack of the co-landlord's signature, absence of proof of authority, and contradiction with the formal lease, suggests a willingness to rely on tenuous or dubious documentation to resist his contractual obligations. The production of receipts purporting to cover rent for decades into the future, many of which are of questionable provenance, further undermines his reliability as a witness.

46. Upon being served with the statutory notice, the Tenant moved the Tribunal by a reference in Form B dated 22nd April 2025, filed through his advocates, opposing the notice. In that reference he pleaded that he had paid rent in advance up to the year 2038 in the sum of Kshs 2,720,000, that the Landlords had acknowledged payments thereof by issuing receipts. He later changed his position at the hearing by stating that he had paid rent up to the year 2044. This is an additional six (6) years from his original contention. This change of goalposts depicts a character whose credibility is doubtful. We choose not to believe him.

47. In contrast, the Landlord, Ahmed Salim, gave evidence that was more consistent with the original lease and with commercial common sense, namely, that a landlord would not lightly agree to fix rent for twenty years at a rate lower than the initial rent agreed upon and to forgo all increments. It would in our view be the most irrational thing for any right-thinking human being to do.

48. Kenyan courts have repeatedly held that when assessing credibility in the context of disputed documents, the court is entitled to consider the inherent probability of the parties' versions, the consistency of their testimony with objective documents, and the presence or absence of corroboration.

49. In *Central Bank of Kenya Ltd v Trust Bank Ltd & 4 Others* [1996] eKLR, the Court of Appeal emphasised that a party alleging fraud must demonstrate it by credible evidence and that the court will look askance at self-serving documentation unsupported by independent proof. Applying those principles here, the Tribunal is satisfied that the Landlords' version is more probable and that the Tenant's evidence is self-serving and unreliable.

IV. The final issue is on who is liable to pay costs

50. As regards costs, the same are in the Tribunal's discretion under section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs to the Landlords being the successful parties.

C. DISPOSITION

51. Having determined the principal factual and legal issues, the Tribunal must now consider the appropriate reliefs. Under section 12(1) of Cap 301, the Tribunal has power to vary or rescind the terms of a controlled tenancy, to determine the rent payable, to make orders for recovery of possession, and to award costs. These powers must be exercised judiciously, bearing in mind both the rights of landlords to derive income from their property and the protection afforded to tenants against arbitrary eviction.

52. In the present case the Landlords sought two principal remedies: payment of rent arrears and termination of the tenancy with vacant possession. Given the Tribunal's finding that the Tenant is in arrears of Kshs 2,476,216 and that such arrears arise from persistent non-compliance with an express contractual term, the Tribunal sees no basis to deny them the relief sought.
53. The Tenant has not expressed willingness to regularise the arrears or to submit to the increment clause going forward; instead he has anchored his defence on an unenforceable document and on allegations of full payment, which the Tribunal has rejected. This conduct bespeaks a tenant who is either unwilling or unable to be bound by the bargain he freely entered into.
54. Authorities such as *Gusii Mwalimu Investment Co Ltd & 2 Others v Mwalimu Hotel Kisii Ltd* [1996] eKLR recognise that a landlord is entitled to recover possession where a tenant persistently fails to pay rent or otherwise fundamentally breaches the lease, even in the context of statutory protection. Protection of tenants is not a licence for indiscipline or for unilateral rewriting of contracts. The Tribunal is persuaded that, if the tenancy were to subsist, it would continue to be a source of dispute and injustice to the Landlords.
55. Accordingly, and in line with what the parties styled as Option E2, the Tribunal will grant an order terminating the tenancy and directing the Tenant to hand over vacant possession. However, in order to cushion the Tenant from abrupt disruption of his business, the Tribunal will grant a reasonable period of sixty (60) days from

the date of this judgment within which to vacate. Should the Tenant fail to do so, the Landlords shall be at liberty to levy eviction and to obtain all necessary police assistance to enforce the orders of this Tribunal.

56. On the question of costs, the general principle, encapsulated in section 12(1)(k) of Cap 301 and Section 27 of the Civil Procedure Act which have consistently applied in Kenyan jurisprudence, is that, costs follow the event unless the court or tribunal, for good reason, orders otherwise. The Landlords have substantially succeeded in their claim; the Tenant's reference opposing the statutory notice has failed. No exceptional circumstances have been shown to warrant a departure from the usual rule. The Tribunal therefore adopts Option E4 as proposed by counsel and will award the costs of these proceedings to the Landlords, to be taxed if not agreed upon.
57. In conclusion, the Tribunal reiterates that this dispute has been determined on the basis of the law and evidence. While the parties have had a long-standing relationship, commercial justice requires that contracts be honoured and that statutory protections not be distorted into shields for non-performance. The Landlords were entitled to expect that the clear increment clause in their lease would be respected. The Tenant, having failed to comply and having sought refuge in an unenforceable document, must now bear the legal consequences. The Tribunal nonetheless encourages the parties to explore, even at this stage, the possibility of an amicable arrangement relating to settlement of the decretal arrears and the handover of the premises, in order to preserve whatever goodwill may remain between them.

D. FINAL ORDERS

58. For the avoidance of doubt, the final orders of this Tribunal are as follows, and they shall form part of the decree herein:

- a) The Tenant's reference dated 22nd April 2025 challenging the Landlords' statutory notice is dismissed.***
- b) The tenancy between the parties over the premises known as Kakamega Municipality Block II/21 is hereby terminated.***
- c) The Tenant shall within sixty (60) days from the date hereof vacate and deliver vacant possession of the said premises to the Landlords.***
- d) Judgement is entered for the Landlords against the Tenant in the sum of Kenya Shillings Two Million Four Hundred Seventy-Six Thousand Two Hundred Sixteen (Kshs 2,476,216) being rent arrears.***
- e) The Tenant shall pay to the Landlords the costs of these proceedings, such costs to be taxed by the Tribunal's Deputy Registrar, if not agreed upon.***
- f) In default of voluntary compliance, the Landlords shall be at liberty to levy execution and eviction against the Tenant through a Licensed Auctioneer with assistance of the OCS, KAKAMEGA POLICE STATION as may be necessary.***

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS **5TH DAY OF DECEMBER 2025**

**HON. GAKUHI CHEGE
(PANEL CHAIRPERSON)
BUSINESS PREMISES RENT TRIBUNAL**

HON. JOYCE AKINYI OSODO
(PANEL MEMBER)
IN THE PRESENCE OF: -

Miss Ndege holding brief for Miss Machio for the Tenant
Ms Ikhumba for the Landlord