



**Munyingi v Thuo (Tribunal Case E105 of 2024)  
[2025] KEBPRT 425 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEBPRT 425 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E105 OF 2024  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
OCTOBER 9, 2025**

**BETWEEN**

**ROSE WAIRIMU MUNYINGI ..... LANDLORD**

**AND**

**JANE SARAH NYAMBURA THUO ..... TENANT**

**JUDGMENT**

**Introduction**

1. This judgment concerns a reference and Notice of Motion dated 25th September 2024 by the Landlord/Applicant seeking, inter alia, termination of the Tenant/Respondent's controlled tenancy over Room 6 on Nyeri Municipality Block 2/69, eviction and vacant possession, leave to break into the premises should the Tenant decline to deliver possession, leave to levy distress for rent arrears alleged to be standing at Kshs. 1,010,480 as at August 2024, and police assistance from the O.C.S. Nyeri Police Station during the exercise.
2. The application is supported by the Landlord's Affidavit of even date wherein it is deposed that the Tenant has persistently defaulted in rent, that arrears have accrued over time, and that despite demands the Tenant has neither vacated nor regularized her rent account. The Landlord's Notice of Motion also prayed for costs.
3. The Tenant opposes the application through a detailed Replying Affidavit sworn on 17th June 2025 and later written submissions, contending that the arrears figure is exaggerated and internally inconsistent, that she substantially complied with a prior Tribunal ruling ordering settlement of Kshs. 475,000 within ninety days, and that the Landlord's attempts amount to harassment and a contrived push to evict her outside Cap 301.
4. The Tenant raised a Preliminary Objection dated 17th October 2024 asserting res judicata and functus officio arising from Nyeri BPRT Case No. 49 of 2023. By a reasoned ruling delivered on 17th January



- 2025, this Tribunal dismissed the objection, found the matter not barred, directed compliance, and ordered that the dispute proceeds to hearing of the reference with parties exchanging rent statements.
5. The dismissal of the Preliminary Objection resolved the jurisdictional and procedural challenge and left for determination the merits of the Landlord's prayers and the Tenant's opposition.
  6. The Landlord's Reference cites persistent rent default and seeks orders to regain possession and to recover accrued arrears through distress. The contemporaneous Notice of Motion seeks termination of tenancy and order to vacate; eviction with leave to break in and police assistance; leave to levy distress to recover Kshs. 1,010,480 as at August 2024 and mesne profits at Kshs. 33,060 per month; O.C.S. Nyeri to ensure compliance; and costs of the suit.
  7. The Landlord depones that the Tenant occupies the business premises at a monthly rent of Kshs. 33,060, that the Tenant was previously engaged in BPRT E049/2023 which was later dismissed, and that arrears stood at Kshs. 1,010,480 as at August 2024. She deposes that there were failed attempts at amicable resolution, requests for eviction, and prays to recover arrears by distress.
  8. There was an order for inter-partes hearing on 30/09/2024 and later directions for exchange of rent accounts and compliance with Order 11 of the Civil Procedure Rules within 21 days after dismissal of the Preliminary Objection.
  9. The Tenant's Replying Affidavit sets out her tenancy history, stating that the rent was Kshs. 25,000 (later Kshs. 29,000) with a security deposit of Kshs. 75,000, and narrates earlier disputes including BPRT 47 of 2021 and BPRT 49 of 2023. She maintains that as at 4th June 2024, arrears were determined at Kshs. 475,000 payable within ninety days, and avers substantial compliance through payments of Kshs. 425,000 (later stating Kshs. 450,000), leaving a lower balance than claimed. She accuses the Landlord of inflated and duplicated computation (e.g., 2023 entries) and harassment. She proposes a structured plan to clear remaining arrears by instalments.
  10. The Landlord's written submissions frame issues around default, *res judicata/functus* (disputing their application), and costs. They assert continuing arrears, cite Section 4 of the *Distress for Rent Act* (Cap 293), invoke Cap 301 termination provisions, and rely on authorities for the landlord's entitlement to rent and to resort to distress if ordinary recovery fails. A landlord's rent account statement is referenced, indicating payments to August 2025 and a net balance due.
  11. On the other hand, the Tenant urges dismissal, re-emphasizing the finality of prior orders up to June 2024 on arrears, challenges the credibility of the Landlord's computations, alleges constructive eviction/harassment, invokes Article 47 and the *Fair Administrative Action Act*, and prays for continued protection of quiet enjoyment. She pegs current arrears at a far lower figure and offers structured payment.
  12. There is no serious contest that the Tenant remains in possession and is conducting business at the premises. The core factual controversy is the quantum and period of rent arrears and the legal consequences flowing therefrom.
  13. The Landlord has exhibited a demand letter dated 5th August 2025 showing a month-by-month arrears schedule spanning November 2021 through August 2025, with the rent escalating from Kshs. 25,000 to Kshs. 29,000 and subsequently Kshs. 33,060, and summations of outstanding balances net of certain payments.
  14. The Tenant has exhibited receipts and narrates payments made post the ruling of 20th June 2024 in BPRT 49 of 2023, emphasizing substantial compliance with the ordered Kshs. 475,000 within the 90-day period and acknowledging a smaller residual balance (variously cited as Kshs. 25,000 or



- Kshs. 50,000 plus some current months). She disputes the mathematical validity and legal propriety of including periods already accounted for in earlier proceedings.
15. There is thus a narrow common ground: some arrears remain outstanding. The extent is disputed: the Landlord pleads Kshs. 1,010,480 as at August 2024 whereas the Tenant pegs a far lower composite figure inclusive of current months post-June 2024. The dispute on quantum does not extinguish the landlord's right to lawful recovery mechanisms for rent that is due.
  16. We have perused the court record in respect of Nyeri BPRT Case No. E049 of 2023 and noted that on 4<sup>th</sup> June 2024, the Tenant was ordered to pay a sum of Kshs 475,000/= within 90 days thereof. The said amount was the admitted rent arrears for the period up to April 2024.
  17. The Tenant claims to have substantially paid the said amount leaving an undisclosed balance. The case was subsequently dismissed on 22<sup>nd</sup> August 2024 for want of prosecution by Hon. Mike Makori. The Landlord is therefore entitled to pursue any unpaid rent from November 2022 to date through the instant proceedings.

## **B. Issues for Determination**

18. From the pleadings, affidavits, exhibits and submissions, the following issues arise for determination:
  - i. What is the proper legal framework governing recovery of rent arrears and termination/eviction for a controlled tenancy under Cap 301, and how does the *Distress for Rent Act* (Cap 293) operate in this context?
  - ii. Whether, on the evidence, the Tenant is in rent arrears and, if so, whether the Landlord is entitled to levy distress for rent.
  - iii. Whether the Landlord has met the statutory threshold for termination and eviction under Section 4(2) of Cap 301.
  - iv. What orders should issue as to timelines for settlement and as to costs.

## **C. Legal Analysis & Determination**

19. Landlord's right to rent & distress: The Tenant's continued occupation without full rent payment engages the landlord's right to rent. Kenyan courts recognize that a landlord is entitled to rent unless there is lawful justification for non-payment; this principle is reflected in decisions such as *Republic v Business Premises Rent Tribunal & Another ex parte Albert Kigera Mugo* [2017] eKLR. In this case, the Tenant admits outstanding sums (placing them at a lower figure) and proposes instalments, thereby acknowledging indebtedness, which in law supports recourse to distress subject to statutory safeguards.
20. *Distress for Rent Act* (Cap 293): Section 4(1) permits lawful distress and, after the prescribed notice, sale of distrained goods for the best obtainable price to satisfy rent and charges. The Landlord's prayer aligns with this route. The disputed quantum does not negate entitlement to distress; it merely informs the rent account to be struck and the extent of recovery.
21. Controlled tenancies & eviction: Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301) stipulates that a landlord who wishes to terminate or alter to the detriment of a tenant must give a statutory notice in the prescribed form.
22. Case law such as *Saheb v Hassanally* [1981] eKLR and *Caledonia Supermarket Ltd v Kenya National Examinations Council* [2000] eKLR underscores the legal position that eviction absent a valid Section



- 4(2) notice is unlawful. In this case, no valid Section 4(2) notice is exhibited in the current record, and previous notices have been overtaken by subsequent proceedings. Accordingly, while rent recovery is available by distress, eviction cannot issue.
23. Mesne profits: The decision in *Hotel Premises Ltd v Willesden Investments Ltd* [2009] eKLR) conceptualize mesne profits as damages for trespass post-termination. As termination has not lawfully occurred here, mesne profits are inapposite at this stage; the Tenant is not yet a trespasser.
  24. Res judicata & functus: The Tenant's earlier Preliminary Objection alleging res judicata was dismissed on 17th January 2025; the Tribunal found the prior suits had not culminated in final determinations barring the present reliefs and noted ongoing arrears and compliance issues. The res judicata elements articulated in *IEBC v Maina Kiai* (2017) eKLR were not met on the record as summarized in that ruling. The merits therefore remain for determination, and we approach them afresh.
  25. Burden and standard: Sections 107–109 of the [Evidence Act](#) (Cap 80) impose upon the Landlord the burden to prove default and the right to the reliefs sought; the Tenant bears the evidential burden on special matters within her knowledge such as payments.
  26. On the record, both parties tendered documents: The Landlord tendered a schedule of arrears and the Tenant tendered receipts, and both filed submissions. With the Tenant's admission of a residual balance, the balance of probabilities favours a finding of arrears due and payable, albeit the precise figure must be reconciled.
  27. Having perused the pleadings and the documentary record, the Tribunal is satisfied that this is a controlled tenancy within the meaning of Cap 301. The Tenant has been in occupation since at least 2017 and is carrying on a business in Room 6. The Landlord contends that default became persistent from 2022/2023, with the arrears allegedly compounding into seven figures by August 2024; the Tenant counters that as at 4th June 2024, the Tribunal in BPRT 49 of 2023 quantified arrears at Kshs. 475,000 payable within ninety days and that she substantially complied, leaving only a small balance and some current months. The record of the Preliminary Objection ruling corroborates that there were subsequent payments post-June 2024 and a residual balance that remained outstanding.
  28. The Tenant also attacks the credibility of the Landlord's schedule, asserting duplication for 2023 and inflation for 2024/2025 in the demand letter of 5th August 2025. While these criticisms may bear upon the ultimate arithmetic of the account, they do not erase the Tenant's own admission of indebtedness.
  29. Under Sections 107–109 of the [Evidence Act](#), the party asserting a fact must prove it; however, where a debtor admits owing a balance, the controversy shifts to quantum rather than liability. The appropriate course is to permit recovery mechanisms for the lawful amount and to direct parties to reconcile the account in accordance with the rents lawfully agreed or determined, with credit given for all payments proved by receipts.
  30. On the remedy, we align with the holdings in *ex parte Albert Kigera Mugo and Palmy Company Ltd*: where a tenant persists in default and ordinary requests fail, a landlord may lawfully invoke distress under Cap 293, provided procedural safeguards are observed (including proper inventory, statutory notices, and conduct by a licensed auctioneer).
  31. In the present case, the Tenant's continued occupation and admitted arrears justify allowing distress limited to the lawful amount ultimately found due on reconciliation. Any dispute as to items distrained, valuation, or sale must be dealt with according to Cap 293 and applicable auctioneers' regulations.



32. The plea for eviction requires stricter scrutiny. The Tribunal's jurisdiction to sanction eviction stems from Cap 301 and is conditioned upon a valid notice to terminate under Section 4(2). The jurisprudence of *Saheb v Hassanally* and *Caledonia Supermarket v KNEC* remains good law: eviction in the absence of a compliant notice is unlawful. No such notice is exhibited by the landlord. It follows that even if arrears are due, eviction cannot be decreed. The Landlord's recourse remains distress, but not termination or vacant possession in the absence of a valid notice that has taken effect.
33. The Tenant has also pleaded harassment and constructive eviction. The Tribunal's protective mandate under Cap 301 obliges it to guard against self-help tactics or coercive conduct designed to dislodge a tenant without due process. However, the Tenant's remedy for harassment lies in injunctive relief which has not been sought by her in this case. On the present motion, framed around eviction and distress, the cogent legal remedy is to decline eviction and to allow distress for arrears that are due and owing.
34. On mesne profits, the law views these as damages accruing after lawful termination where the occupant becomes a trespasser. Because termination under Section 4(2) has not occurred, a claim for mesne profits is premature. Any reference to mesne profits in the Landlord's prayers is therefore declined.
35. Res judicata and functus officio: The Tribunal has already spoken via the ruling of 17th January 2025; this judgement proceeds on that basis. For completeness, we observe that the Tenant's argument about finality of the Kshs. 475,000 figure as at April 2024 does not bar the present consideration of arrears accruing thereafter; neither does it relieve the Tenant of the obligation to prove payments against the running account.
36. The Tribunal takes judicial notice that commercial tenancies involve periodic obligations; arrears must be tracked month-by-month, and subsequent defaults are amenable to fresh reliefs without offending res judicata.
37. The equities: The Tenant operates a small business and has expressed willingness to clear arrears by instalments. The Landlord, as property owner, is entitled to timely rent and to statutory remedies for non-payment. Cap 301 balances these interests by protecting tenure through mandatory notices for termination, and preserving the landlord's rent recovery tools through distress. The orders we frame below honour both sides of this statutory balance.
38. Reconciliation directive: In view of the contested computations, we direct a structured reconciliation anchored on contemporaneous records. The Landlord shall file a chronological rent ledger from November 2022 to the filing date showing for each month: rent due, amount paid, date and mode of payment, receipt number, balance carried forward, and any arrears.
39. The Tenant shall within 14 days thereafter file a matching schedule with receipts and bank confirmations. Either party may highlight variances. This exercise shall therefore suspend the distress process pending reconciliation of the rent account.
40. Time to pay upon reconciliation of the rent account: To avoid undue hardship to the Tenant's business, we shall allow a short runway to clear the arrears. The evidence shows the Tenant has previously honored structured payments when ordered. Consistent with that history, we shall allow sixty (60) days from the date of reconciliation to settle the arrears, failing which the Landlord will be at liberty to proceed with the distress.
41. Police assistance: Given that eviction is declined and distress must comply with Cap 293, there is no basis on the current record for a blanket police supervision order to "break in" for eviction. However, consistent with the [Auctioneers Act](#) and Cap 293, police assistance may be sought administratively if



necessary to keep the peace during a lawful distress. This judgment does not pre-authorize forcible eviction or lock-out.

42. Costs: Both parties have partially succeeded. In exercise of our discretion under Section 12(1)(k) of Cap 301 and Section 27 of the [Civil Procedure Act](#), we direct each party to bear its own costs.

#### **D. Disposition & Orders**

43. In line with the Court of Appeal decision in *Weston Gitonga & 10 others Vs Peter Rugu Gikanga & another* [2017] eKLR, we shall issue a preliminary decree in the following terms: -
- a. The Landlord shall within 14 days hereof file a chronological rent ledger from November 2022 to the filing date, showing for each month: rent due, amount paid, date and mode of payment, receipt number, balance carried forward.
  - b. The Tenant shall within 14 days thereafter file a matching schedule with receipts and bank confirmations. Either party may highlight variances.
  - c. This exercise shall therefore suspend the distress process pending reconciliation of the rent account.
  - d. The prayer for eviction and vacant possession is declined for want of a valid notice of termination under Section 4(2) of Cap 301.
  - e. The Tenant shall clear the determined rent arrears within sixty (60) days of reconciliation, failing which the Landlord shall be at liberty to proceed with lawful distress.
  - f. Each party shall bear its own costs.

It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)**

**HON. JOYCE AKINYI OSODO - (MEMBER)**

**BUSINESS PREMISES RENT TRIBUNAL**

In the presence of: -

Ms. Muriuki holding brief for Karanja for Landlord

No appearance for tenant

