



**Eucabeth Aluoch Bolo t/a North Airport School Utawala v Nyasoro & another  
(Tribunal Case E212 of 2024) [2024] KEBPRT 814 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 814 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E212 OF 2024  
P MAY, MEMBER  
JUNE 7, 2024**

**BETWEEN**

**EUCABETH ALUOCH BOLO T/A NORTH AIRPORT SCHOOL  
UTAWALA ..... APPLICANT**

**AND**

**NICHOLAS OGWENO NYASORO ..... 1<sup>ST</sup> RESPONDENT**

**JENKS AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before me is the tenant's notice of motion dated 13<sup>th</sup> February, 2024 brought under certificate of urgency. The tenant sought for a plethora of orders against the respondents predominantly challenging the attachment of a motor vehicle by the respondents. The application is premised on the grounds set out on its face and the supporting affidavit sworn by Eucabeth Aluoch Bolo.
2. The application was placed before the Tribunal on 14<sup>th</sup> February, 2024 whereby the Tribunal issued interim orders in favour of the tenant pending the inter parties hearing. The respondents upon being served duly entered appearance. The landlord filed an application under certificate dated 16<sup>th</sup> February, 2024 seeking for stay of the interim orders issued previously.
3. The parties filed their responses to the applications and subsequently elected to canvass the 2 applications simultaneously by way of written submissions. I have considered the pleadings and the submissions on record and wish to proceed as follows:

**Background of the dispute**

4. The tenant commenced the present proceedings challenging the actions of the 2<sup>nd</sup> Respondent who was acting at the behest of the landlord of attaching their motor vehicle registration KBY 620J over



alleged rent arrears. The tenant stated that the vehicle in question was their main tool of operation and was apprehensive that the same would be disposed by way of a sale.

5. The landlord stated that the tenant had fallen into arrears of Kshs 295,000 which precipitated them to instruct the auctioneers who lawfully proclaimed a motor vehicle owned by the tenant.

### Analysis

6. The parties herein do not dispute to the jurisdiction of the Tribunal. They are in agreement that the tenancy in question is controlled as defined under Section 2 of the [Landlord and Tenant \(shops, Hotels and Catering Establishment\) Act](#) Cap 301, provides for what a controlled tenancy entails i.e
  - a) which has been reduced into writing and which-
    - i. is for a period not exceeding five years; or
    - ii. contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
    - iii. relates to premises of a class specified under subsection (2) of this section.
7. The submissions filed by the parties have addressed the issues of grant of temporary orders of injunction as sought by the tenant. The parties buttressed their respective positions on the triple requirements which were set for the grant of temporary orders of injunction in the celebrated case of *Giella v Cassman Brown & Company Limited*, (1973) 358 EA as follows:
  - (i) The applicant must establish a *prima facie* case with a probability of success.
  - (ii) The applicant must then demonstrate that he or she stands to suffer irreparable loss or damage which cannot be adequately compensated by an award of damages.
  - (iii) Where there is doubt on the above, that the balance of convenience tilts in favour of the applicant
8. A *prima facie* case was defined in the case of; [Mrao Ltd v First American Bank of Kenya Ltd & 2 others](#) (2003) eKLR at page 8/10 by Bosire JA (as he then was) to mean:-“So what is a “*prima facie* case”. I would say that in civil cases, it is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
9. Guided by the foregoing decisions, the Tribunal is required to determine whether the sub-tenant has brought himself within the principles of granting an injunction based on the materials presented before me.
10. Termination of a controlled tenancy is provided for under section 4 of the [Landlord and Tenant \(shops, Hotels and Catering Establishments\) Act](#). The Section provides that; “Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the provisions of this Act”
11. The process of levying distress for controlled tenancies requires one to obtain the consent of the Tribunal. The Landlord by approaching the Tribunal before levying distress has acted within the full purview of the law.



12. In determining whether Landlord's right to levy distress had crystallized, I am guided by the decision in Owayo v George Hannington Zephaniah Aduda t/a Aduda Auctioneers and another (2007) 2 KLR 140, (2008) EA 287, where the Court of Appeal considered section 3(1) of the Distress for Rent Act and the English common law in dealing with the question of what constitutes illegality for distress for rent. It was stated that an illegal distress is one where there was no right to distrain or where a wrongful act was committed at the beginning of the levy thereby invalidating all subsequent proceedings. The instances of illegal distress were cited as: where distress is by a landlord who has parted with his reversion, distress by a person in whom the reversion has not vested, a distress when no rent is in arrears, a distress for a claim or debt which is not rent, distress after a valid tender of rent has been made, a second distress for the same rent, distress off the premises or on a highway, distress at night and a distress carried out contrary to the law relating to Distress.
13. In the present proceedings the landlord has indicated that the distress proceedings were commenced without seeking leave from the Tribunal. A reading of the powers of this Tribunal as indicated under section 12 of CAP 301 is explicit that the Tribunal has the power to permit for levying of distress. I am further fortified by the preamble of the Act which I shall proceed to rehash hereinbelow:
- “ An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected there with and incidental thereto.”
14. In light of the above, it is clear that the tenant has satisfied the requirements for the grant of orders of temporary injunction. I will now turn to the question of the rent payable. I have perused the agreement annexed and it was term of the agreement that the rent would be reviewed after 2 years. The 2-year period has lapsed and I am convinced by the landlord's assertion that the rent had been reviewed to Kshs 82,500. The tenant having previously complied with the new terms, the Tribunal has no reason to vary or disturb the new terms. Parties are bound by their agreements.
15. Before the Tribunal pens its final orders, it is important to point out that the landlord's application dated 16<sup>th</sup> February, 2024 is largely a response to the tenant's application. The modes of responding to applications are well defined under our civil procedure rules. Responding by filing a counter-application is strange in our jurisdiction. The application therefore falls.
16. The upshot of the above is that:
- a. The tenant's application dated 13<sup>th</sup> February, 2024 is allowed in terms of prayers 4, 5 and 7.
  - b. The tenant shall clear the existing rent arrears of Kshs 95,000 and any other outstanding amount within 60 days from the date herein.
  - c. Each party shall bear their own costs
  - d. This ruling settles the reference dated 13/2/2024

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF JUNE, 2024**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of

Munyendo for the Applicant/Tenant



Mungla for the Respondent

