



**Themes Restaurant v Ijara Properties & 2 others (Tribunal Case
E949 of 2022) [2023] KEBPRT 202 (KLR) (Civ) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 202 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E949 OF 2022
A MUMA, VICE CHAIR
MARCH 27, 2023**

BETWEEN

THEMES RESTAURANT TENANT

AND

IJARA PROPERTIES AGENT

AND

FANTASY AUCTIONEERS 1ST RESPONDENT

BURHANI FOUNDATION KENYA 2ND RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant is the tenant of the suit premises in this matter, who occupies Dominion House, Tom Mboya Street. (hereinafter the “Tenant”).
2. The firm of Mbichi Mboroki & Kinyua Advocates represent the tenant in this matter.
3. The 3rd Respondent is the landlord and owner of the suit premises located at Dominion House along Tom Mboya Street which they rented out to the tenant.
4. The 1st respondent is an agent who manages the property on behalf of the landlord while the 2nd respondent is an auctioneer who acted under the instructions of the landlord to distress for rent.
5. The firm of Mogaka Omwenga & Mabeya Advocates represents the Respondent in this matter



B. The Dispute Background

6. In a Reference to the Tribunal and an Application dated 19th October 2022 under Certificate of Urgency of even date, the Tenant filed a complaint before the Tribunal claiming that the landlord be restrained from carrying away or disposing off their property after they were issued with a Proclamation Notice for defaulting in paying rent.
7. The landlord filed a response and an application dated 3rd November 2022 where they were seeking to be granted leave to levy distress for rent.

C. Jurisdiction

8. The jurisdiction of this Tribunal is not in dispute

D. The Tenant/applicant's Claim

9. The Tenant filed a Reference and An Application dated 19th October 2022 seeking restraining orders against the landlord. They wanted the landlord to be restrained from disposing off their goods after being issued with a Proclamation Notice.
10. The Tenant obtained restraining orders as against the Respondent on 21st October 2022 restraining the Respondent from disposing of the tenant's goods pending the hearing of the application.

E. The Landlord/Respondent's Claim

11. The Landlord filed a Replying Affidavit dated and an application dated 3rd November 2022 seeking that the Tribunal grant them leave to distress for rent.

F. Issues for Determination

12. Whether the Tenant is in arrears of rent warranting distress?

G. Analysis and Findings

Whether the distress for rent by the landlord was lawful?

13. The tenant has filed an application and reference before this Tribunal seeking that the landlord be restrained from carrying away or disposing of their goods pending the hearing and determination of the suit.
14. The above reference came about after the landlord issued the tenant with a proclamation notice dated 18th October 2022 seeking to levy distress for arrears owed to them of Kshs. 449,000.
15. The landlord has in response to the tenant's claim stated that the tenant is in arrears of rent for three months being August to October 2022 at the rate of Kshs. 120,000.00 per month and a balance of Kshs. 89,000.00 for the month of July 2022.
16. Being a controlled tenancy, the landlord is supposed to follow the procedure outlined in CAP 301 before they levy distress for rent. Section 12(h) requires that the landlord seek leave of the Tribunal prior to distress.
17. I take note of the fact that the landlord has filed an application before this Tribunal dated 3rd November 2022 where they are seeking leave to levy distress for the arrears owed. This however comes after they had already issued the tenant with a proclamation notice dated 18th October 2022.



18. As a result of the above, I find that the landlord did not follow due procedure in seeking to distress.
19. Be that as it may, I also acknowledge that the tenant was in arrears and should be held accountable for the same. The landlord has annexed their Statements of Account breaking down the amounts owed by the tenant.
20. The tenant had averred that they are not in arrears and thereafter changed their position and stated that they are in arrears of Kshs. 250,000.00 I find that the shift in position is questionable. Additionally, the tenant has not attached any document being a Statement of Accounts to prove their position, as such I shall rely on the Statement of Account annexed by the Landlord and order that the tenant pay the arrears in 6 months installments.
21. In light of this I therefore proceed to order as follows;

Orders

- a. The upshot is that the Tenant/Applicant's Reference and Notice of Motion application dated 19th October 2022 are partially allowed in the following terms:
- b. The tenant shall pay Kshs. 200,000.00 per month from 5th April 2023 till payment in full of the arrears, being rent of Kshs. 120,000.00 and Kshs. 80,000.00 for arrears.
- c. In the event of default of any payment as highlighted in (b) above the landlord shall be at liberty to distress and also at liberty to apply for eviction orders.
- d. The Tenant's reference is settled on similar terms.
- e. Each party shall bear their own costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Judgment dated, signed and delivered virtually by Hon A. Muma this 27th Day of March 2023 in the absence of the Tenant and in the presence of Abaya for the Landlord.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

