



**Keoye v Ngechu & 2 others (Tribunal Case E1122 of 2023)  
[2024] KEBPRT 794 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 794 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1122 OF 2023  
CN MUGAMBI, CHAIR  
MAY 27, 2024**

**BETWEEN**

**LINET KERUBO KEYOYE ..... APPLICANT**

**AND**

**ETHAN MURAGE NGECHU ..... 1<sup>ST</sup> RESPONDENT**

**JOHARI REAL ESTATE ..... 2<sup>ND</sup> RESPONDENT**

**BRAIFUS AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Tenant's Application dated 10.11.2023 seeks orders restraining the Respondent's from disposing of the business goods and properties attached on 10.11.2023 and also restraining the Respondent from evicting the Applicant and/or disconnecting essential services. The Applicant has also sought police assistance in the compliance with the orders sought through the OCS, Makongeni police station.
2. The Tenant has deponed in his affidavit in support of the Application that the attachment of his goods by the 3<sup>rd</sup> Respondent is illegal and malicious as she has always diligently paid her rent and the Landlord holds her rent deposit equivalent to the arrears.
3. The Respondents in the affidavit sworn by Trizah Njeri on 6.12.2023 have deponed that the Tenant has been in rent arrears since February 2023 and have annexed to the said affidavit, the Tenant's statement of rent account.
4. The Respondents have further deponed that as at 23.10.2023, the Tenant was in rent arrears of Kshs. 30,394/= which necessitated the levying of distress for rent against the Tenant by the 3<sup>rd</sup> Respondent.
5. The Respondents further depone that on 10.11.2023, the 3<sup>rd</sup> Respondent attached the Tenant's goods and that there is nothing illegal with the proclamation and attachment of the Tenant's goods.



6. The Tenant in her further affidavit reiterates the fact that as at the time her goods were attached, she was in rent arrears of Kshs. 30,394/= while the Landlord held her rent security deposit of Kshs. 27,000/=.
7. Is the Tenant deserving of the orders sought in her Application?

It is common ground as between the Landlord and the Tenant that the Tenant was in rent arrears when her goods were proclaimed and attached on 10.11.2023. The Tenant admits to being in arrears of rent in the sum of Kshs. 30,394/= as at 10.11.2023. clearly therefor, the rights of the Landlord to levy distress had crystalized under Section 3(1) of [Cap 293](#), which provides as follows:-

“subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case.”

8. The Tenant was therefore in breach of her fundamental duty to pay rent and as such she is not deserving of the equitable reliefs she has sought in her Application. In the case of; [Samuel Kipkorir Ng'eno & Another vs Local Authorities Pension Trust \(Registered Trustees\) & Another](#) [2013] eKLR at paragraphs 9 and 12, the court stated as follows:-

9 “A Tenant’s first and main obligation is to pay rent as and when it becomes due, for the Landlord has the right to an income from his investment. Why would a Tenant allow himself to fall into such high arrears of rent?

12 “The temporary injunction sought in the present Applications is an equitable remedy at the court’s discretion. He who comes to equity must come with clean hands. A Tenant who is in huge arrears of rent is undeserving of the court’s discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due.”

9. The Tenant has stated that the Landlord holds her rent security deposit of Kshs. 27,000/= and should therefore not have attached the Tenant’s goods. I do not think that the rent deposit necessarily forms part of the rent payable by the Tenant every month. The rent deposit acts more like “caution money” and is meant to take care of eventualities like the cost of repairs and renovations on parts of the demised premises occasioned by the Tenant. It is money which is refundable at the termination of the tenancy and upon the Landlord being satisfied that the demised premises are in the condition in which they were let out. The fact that the Landlord held the Tenant’s deposit could therefore not be a bar to the Landlord exercising his rights under Section 3(1) of the [distress for rent Act](#), Cap 293 of the Laws of Kenya.
10. In view of the above findings, I do not find any merits in the Tenant’s Application dated 10.11.2023 and the same is dismissed with costs to the Landlord.
11. In view of the findings and conclusions arrived at in the foregoing paragraphs, I further do not find any merits in the Tenant’s Complaint/Reference dated 10.11.2023 and the same is also dismissed with costs to the Landlord/Respondents.
12. File is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF MAY, 2024.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**



Delivered in the presence of Ms. Kerubo for the Tenant and in the absence of the Respondents  
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