



**Gitonga v Njogo (Tribunal Case E082 of 2023)
[2023] KEBPRT 1117 (KLR) (Civ) (4 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1117 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E082 OF 2023
M MAKORI, MEMBER
DECEMBER 4, 2023**

BETWEEN

MARGARET GITONGA TENANT

AND

CHARLES MATHENGE NJOGO LANDLORD

RULING

1. The Landlord/Applicant filed an application dated 18/8/2023 seeking to compel the Tenant/Respondent pay Kshs 108,000/= that had accrued as rent arrears.
2. The Tenant/Respondent on the other hand filed a Replying Affidavit dated 11/9/2023 partly refuting the claim that he has any pending rent arrears. Additionally, the Landlord/Applicant filed a Further affidavit dated 28/9/2023 and both parties filed written submissions.
3. From the totality of pleadings, the issue that commends itself for determination is whether the Landlord/Applicant's application to levy distress against the Tenant/Respondent is merited?
4. Section 4(1) of [Cap 301](#) provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
5. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7. The grounds stated under this provision and which are applicable herein include; -
 - i. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;



- ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy; and
 - iii. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
6. That it is the Landlord/Applicant's contention that upon nonpayment of Rent arrears by the Tenant/Respondent, he decided to levy distress over the suit property. The right to levy distress is reserved under section 3 of the [Distress for Rent Act](#), Cap 293 of the Laws of Kenya, which provides; -
- “subject to the provisions of this Act and 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.”
7. In seeking to make the appropriate orders in view of the foregoing, I am guided by section 12(1)(e) of [Cap 301](#) which grants the Tribunal power; -
- “To make orders upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits which orders may be applicable to any person whether or not he is a Tenant, being at any material time in occupation of the premises comprised in a controlled tenancy.”
8. Before concluding this ruling, I wish to adopt what the superior court stated in the case of [Samuel Kipkori Ngeno & Another – vs- Local Authorities Pension Trust \(Registered Trustees\) & Another](#) (2013) eKLR at paragraphs 9 and 12 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....”
12. ... He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due”.
9. The Landlord/Applicant avers that the Tenant/Respondent occupies four units of the suit property and where they are supposed to pay a rent of Kshs 12,000/=
 10. The Tenant/Respondent on the other hands concedes to have added some spaces from the additional spaces and for which rent was Kshs 8,000/=
 11. At paragraph 5 of the supporting Affidavit dated 18/8/2023 the issue of additional four spaces is raised and which are confirmed at paragraph 9 of the Replying Affidavit dated 11/9/2023.
 12. In the totality of the pleadings, the Tenant/Respondent has not intimated how the rent for the additionally four spaces was to be paid and whether he has been paying for the same.
 13. In absence of any evidence to the contrary, I am persuaded by the Landlord/Applicant's account that the Tenant/Respondent has failed in her mandate of paying rent for the additional spaces.



14. In the circumstances of this case, I make orders as follows; -

- i. That Landlord/Applicant application is merited and is allowed as prayed.
- ii. In exercise my discretion to grant the Tenant/Respondent 60 days from today within which to pay any outstanding arrears and/or vacate the disputed units' failure to which the Landlord/Applicant shall be at liberty to levy for distress.
- iii. The OCS Chaka Police Station to ensure compliance of this orders.
- iv. Each party shall bear its costs.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DECEMBER, 2023.

HON. MIKE MAKORI (MR.)

MEMBER

4.12.2023

In the presence of;

Ms. Mahogo for the Tenant

Mr. Karanja for the landlord

