



**Edward v Ndeti (Tribunal Case E1029 of 2023)
[2023] KEBPRT 1166 (KLR) (Civ) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1166 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1029 OF 2023
CN MUGAMBI, CHAIR
DECEMBER 5, 2023**

BETWEEN

JOYCE MWIKALI EDWARD LANDLORD

AND

DANIEL NDETI DEFENDANT

RULING

1. The landlord's application dated 16.10.2023 seeks orders that the tenant be compelled to remove his business stock, goods and/or items in the rented premises failing which a break in order be made in favour of the Applicant with the supervision of the OCS, Tala police station.
2. The Applicant has deponed in her affidavit in support of the application that the tenant who pays a monthly rent of Kshs 10,000/= is now in rent arrears of Kshs 190,000/=.
3. The Applicant has also deponed in her said affidavit that the tenant has failed to pay the outstanding rent despite all efforts at an amicable solution.
4. The complaint filed by the tenant seeks breaking orders in favour of the landlord in order to allow the landlord to recover the outstanding rent arrears of Kshs 190,000/= and further seeks eviction orders against the tenant.
5. The application by the landlord is not opposed. Whereas I do not have any problem granting the landlord the breaking orders so as to levy distress against the tenant, I do not think eviction orders can be granted against the tenant.
6. The landlord has annexed to her affidavit a notice to terminate the tenant's tenancy dated 29.6.2022 on the grounds that the tenant had not paid rent amounting to Kshs 30,600/=. Whereas that notice is in the prescribed form, there is no indication that the landlord is attempting to enforce the said notice.



Even assuming that the landlord was enforcing the said notice, there is no evidence placed on the record showing that the tenant was served with the notice as required under Section 4 of [Cap 301](#).

7. The other notice annexed to the affidavit of the landlord/Applicant dated 2.8.2023 does not meet the mandatory formal requirements of a notice under Section 4(2) 4(4) and 4(5) of [Cap 301](#) and is therefore of no effect. It is invalid.
8. In view of the above, I allow the landlord's application in the following terms:-
 - a. That the landlord/Applicant is granted leave to levy distress against the tenant to recover rent arrears amounting to Kshs 190,000/= and any accruing rent.
 - b. That the landlord/Applicant is granted leave to break into the suit premises and therein gain access for purposes of levying distress against the tenant.
 - c. That the tenant shall bear the costs of this application.
 - d. That the complaint by the landlord is allowed in terms of prayers a, b and c above.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

Delivered in the presence of Mr. Nzioka for the landlord and in the absence of the tenant

