



**Njogu v Naitutae (Tribunal Case E647 of 2023)
[2023] KEBPRT 1235 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1235 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E647 OF 2023
JOYCE MURIGI, MEMBER
NOVEMBER 3, 2023**

BETWEEN

MARY WANJIKU NJOGU LANDLORD

AND

PAUL NAITUTAE TENANT

RULING

Background

1. The landlord filed a reference dated 26th June 2023 in this court following issuance of notice of termination of tenancy dated 15th April 2023.
2. The Tenant/Respondent was served on 17th July 2023 with a hearing notice and the said Reference by Mr. Erick Agumba of P.O. Box 42498-00100.
- 3(i) On 26th June 2023, the landlord/Applicant moved this court and filed a notice of motion of an even dated where she sought the following orders:-
 - a. That the application be certified as urgent.
 - b. That the tenant be ordered to pay rent arrears of Kshs. 66,000/=
 - c. That the tenant be ordered to vacate the premises.
 - d. That the tenant be ordered to restore the premises to the position he found them by repairing the shop.
 - e. That costs be awarded to the landlord/Applicant.
- 3(ii) The grounds that she seeks the above orders are:-
 - a. There exists landlord/tenant relationship between the Applicant and Respondent.



- b. That the tenant has since the month of March 2023 up to date failed to pay his rent and the same has now accrued to a sum of Kenya Shillings Sixty Thousand (Kshs. 66,000/=).
 - c. That the tenant has also ignored the notice to pay rent arrears and vacate the premises by the landlord.
 - d. That the landlord will suffer irreparable loss if the said orders are not granted.
- 3. The Applicant/landlord supports her application by an affidavit dated 26th June 2023 where she cites the grounds on which she is seeking the orders prayed for in her notice of motion and the certificate of urgency.
- 4. A second affidavit of service from Mr. Erick Agumba was filed on 29th August 2023 which states that (3) on 7/08/2023, he received from the firm of Ondieki Orangi & Co. Associates a hearing notice and Landlord's notice to terminate or alter terms of tenancy dated 8th August 2023 to effect service upon the Respondent. He served the said documents which the tenant signed and handed back to the court server.
- 5. On 8.8.2023, the date of hearing this matter inter partes, the landlord's advocate Ms. Chege appeared before Hon. Cyprian Mugambi (Chairperson) who observed that there was no evidence of service in the file and he therefore gave a new date for hearing on the 18.9.2023. There was no appearance for the tenant.
- 6. On 18.9.2023, Miss Ooga for the landlord was present in court but there was no appearance for the tenant.

Issues

- i. The complaint under Cap 301 Section 12(4) which was filed in this court on 26th June 2023 concerns the Tenant Mr. Paul Naituate in that he has consistently failed to pay rent on the dates due from the month of March, 2023 to date and his arrears now stand at the sum of Kenya Shillings sixty-six thousand (Kshs. 66,000/=).
- So the issue is rent arrears owed to the landlord by the tenant.
- ii. Another issue raised in the notice of motion is where the Applicant is seeking to have this court order the tenant to vacate the suit premises.
- 7. The landlord/Applicant filed another notice to terminate the tenancy dated 8th August 2023 on the same date which has evidence of service but no other supporting documents.

Determination

- 8. In view of the matter before me which is the notice of motion filed on 29.06.2023, supporting a reference dated 26th June 2023, I make the following orders:-
 - a. That the landlord is allowed to levy distress for rent arrears with the help of a licensed auctioneer.
 - b. That this court is unable to order the tenant to vacate as the notice to terminate tenancy with proof of service is dated 8th August 2023 and it has therefore not matured.
 - c. Costs of Kshs. 20,000/= awarded to the landlord payable by the tenant.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER
2023**

HON. JOYCE MURIGI - MEMBER

3. 11.2023

Ruling delivered in the absence of the parties

