



**Mathenge v Thuo & another (Tribunal Case E433 of 2023)  
[2023] KEBPRT 622 (KLR) (12 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 622 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E433 OF 2023  
A MUMA, AG. CHAIR  
SEPTEMBER 12, 2023**

**BETWEEN**

**LUKA NDIRANGU MATHENGE ..... APPLICANT**

**AND**

**CHARLES JOSEPH MAINA THUO ..... 1<sup>ST</sup> RESPONDENT**

**ELJIMONYACO AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Parties And Representatives**

1. The applicant Luka Ndirangu Mathenge is the tenant and rented out space from the respondent on the suit property known as Plot No. 21 Soweto-Kayole. (hereinafter known as the ‘tenant’)
2. The Firm of CK Chege & Company Advocates represent the tenant/applicant in this matter.
3. The respondent Charles Joseph Maina Thuo is the Landlord and the proprietor of the Suit Property. (hereinafter known as the ‘Landlord’)
4. The firm of Felix Momanyi & Company Advocates represent the Landlord/respondent in this matter.

**B. The Dispute Background**

5. The Tenant approached the Tribunal *vide* a Reference and a Notice of Motion application dated April 28, 2023 under section 12 and section 6 of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The tenant was seeking orders restraining the landlord from harassing, evicting them from the premises and levying distress for rent.
6. The landlord has in response to the tenant’s reference and application filed a replying affidavit dated May 15, 2023 disputing the assertions by the Tenant and claiming that they had the right to levy distress for rent by virtue of previous orders issued by the Tribunal.



### **C. Tenant's Claim**

7. The Tenant has filed a reference and a notice of motion application dated April 28, 2023 seeking that the Tribunal restrain the landlord from evicting them and levying distress for rent.

### **D. Landlord's Claim**

8. The Landlord has filed a replying affidavit dated May 15, 2023 in opposition to the tenant's application claiming that they had been issued with previous orders allowing them to levy distress for rent.

### **E. List Of Issues For Determination**

9. The issues raised for determination are as follows;
  - a. Whether the tenant should be granted the orders as sought in their application?

### **F. Analysis And Findings**

Whether the tenant should be granted the orders as sought in their application?

10. The main issue before this Tribunal is in relation to rent arrears. The tenant approached the Tribunal apprehensive that the landlord was going to evict them and distress for rent on the strength of a proclamation notice issued on April 17, 2023.
11. The tenant did not deny being in arrears as at the time of filing the suit what was in contention was the amount and the fact that the tenant claims that the landlord had not sought leave of the tribunal prior to distressing for rent.
12. The landlord has responded to the tenant's assertions and presented that there was a previous suit before the Tribunal being Case No. E339 of 2014 in which Hon. Gakuhi Chege granted leave to the landlord to distress for all outstanding arrears as at the time.
13. The landlord was seeking to be allowed to enforce the same orders as they had not been enforced, varied, set aside or appealed against.
14. I find that allowing the landlord to levy distress for rent on the strength of these orders would be an injustice to the tenant. The said orders have been overtaken by events by virtue of the fact that a lot of time has lapsed since they were issued.
15. Additionally, the landlord has not given this Tribunal any sufficient reason why they did not act on the orders at the time they were issued.
16. Having stated the above, I also take note that the landlord has presented before this Tribunal that there was a rent payment agreement between the parties dated February 10, 2022 in which the parties had agreed as to the amount owed in arrears and how the same were to be settled.
17. I find that this was an attempt to amicably resolve the dispute by the parties. In addition to this, the tenant has filed a Further Affidavit dated July 24, 2023 where he avers that they met with the landlord and consolidated the accounts and agreed that the amount owed as at that time stood at Kshs. 931,000.00
18. The tenant gave a proposal to pay the arrears in installments being Kshs. 15,000.00 from August 31, 2023 towards the arrears and in addition the Kshs. 18,000.00 being the rent per month.



19. From the proceedings of September 7, 2023, the tenant stated that the arrears stood at Kshs. 900,000.00 and that they were willing to keep defraying the arrears and stay on the premises.
20. I find the proposal by the tenant reasonable and I shall combine it with some provisions of the previous rent agreement as follows;

#### **G. Orders**

- a. The upshot is that the Tenant's Reference and Application dated April 28, 2023 are hereby partially allowed in the following terms;
- b. The tenant shall clear the arrears of Kshs. 900,000.00 within a period not exceeding 9 months.
- c. Failure by the tenant to adhere to orders (b) above shall accord the landlord the liberty to distress for rent, break in and take back vacant possession of the premises.
- d. OCS Soweto shall assist in compliance of order (d) above if need arises.
- e. Each party shall bear their own Costs.

**HON A. MUMA**

**Ag Chair/Member**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling dated, signed and delivered virtually by Hon A. Muma this 12th day of September 2023 in the absence of the landlord and in the presence of Chege for the Tenant.**

**HON A. MUMA**

**Ag Chair/Member**

**BUSINESS PREMISES RENT TRIBUNAL**

