



**Ndede v DP Nandha & KL Dodhia (Tribunal Case E659 of 2024)
[2024] KEBPRT 1543 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1543 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E659 OF 2024
CN MUGAMBI, CHAIR
OCTOBER 9, 2024**

BETWEEN

BEATRICE AKOTH NDEDE TENANT

AND

DP NANDHA & KL DODHIA RESPONDENT

RULING

Introduction

1. The Tenant's Application dated 11.6.2024 seeks an order restraining the Landlord from in any manner interfering with the Tenant's quiet occupation and lawful enjoyment of the suit premises at Central Business Building along Moi Avenue.
2. The Landlord's Application dated 22.7.2024 seeks orders;
 - a. That the Tribunal vacates the orders issued on 13.6.2024.
 - b. That the Landlord's Application to levy distress be allowed.
 - c. That an order of eviction be issued against the Tenant.
 - d. That an order of permanent injunction be issued against the Tenant restraining her from alienating, trespassing, interfering or in any other manner interfering with the suit premises.
3. Both parties have sought police assistance in enforcement of the orders they have sought.

The Tenant's depositions

4. The Tenant's affidavit in support of her Application may be summarized as follows:-



- a. That the Tenant has been in the suit premises since the year 2020 paying a monthly rent of Kshs. 30,000/= and had also deposited two months' rent (Kshs. 80,000/=) with the Landlord.
- b. That the Tenant is in rent arrears of Kshs. 160,000/= which was occasioned by a client who issued a bouncing cheque to the Tenant for services rendered.
- c. That on 13.5.2024, the Landlord served the Tenant with a notice to levy distress.
- d. That on 15.5.2024, the Tenant paid a sum of Kshs. 80,000/= to the Landlord leaving a balance of Kshs. 100,000/= and despite this effort, the Landlord has continued to harass the Tenant.
- e. That the Tenant is willing to clear the outstanding rent.

The Landlord's Replying Affidavit & Affidavit in support of the Landlord's Motion dated 22.7.2024

5. Both affidavits which are in similar terms maybe summarized as follows;-

- a. That the parties entered into a lease agreement for Room 12 in Land Reference No. 209/591.
- b. That the Tenant is in rent arrears and has not paid the rent of June and July 2024 which have already fallen due and is therefore in contempt of court orders issued on 13.6.2024.
- c. That the Landlords have a right to their rent, the Tenant having admitted being in rent arrears.
- d. That the Landlord has no malice towards the Tenant.
- e. That the orders of 13.6.2024 ought to be lifted and the Landlords allowed to proceed with distress for rent.

Analysis and determination

6. The only issues that arise for determination is whether the Tenant is entitled to the orders sought in her Application and whether the Landlords are also entitled to the orders sought in their Application.
7. The facts in this dispute are fairly straight forward. There is no dispute that the Tenant is in rent arrears. As at 15.5.2024, the Tenant admitted to being in rent arrears amounting to Kshs. 100,000/=. On top of this, the Landlord deponed that the rent for June and July 2024 which had fallen due by 22.7.2024 when the Landlord swore the Replying affidavit, remained unpaid. There is no doubt therefore that the Tenant is in rent arrears.
8. The reason the Tenant gives for her failure to pay rent is that one of her clients issued a bouncing cheque which significantly affected her business cash flow.
9. I have noted the Tenant's efforts to clear the rent arrears by her payment of the sum of Kshs. 80,000/= on 15.5.2024, if I were to assume that to be the last payment, then it would be that rent continues to accrue.
10. I do agree that the Landlord is entitled to distress for rent in the circumstances as clearly Section 3 of the [distress for rent Act](#) Cap 293 of the Laws of Kenya allows for the same.
11. The Landlords have in their Application prayed for eviction orders against the Tenant. I do not think this order can be granted as the relevant Act, Cap 301 of the Laws of Kenya requires the Landlords to issue the mandatory notice to terminate tenancy under Section 4(2) of the said Act. This, the Landlords have not done and the tenancy cannot be terminated otherwise. (See Section 4(1) of Cap 301).



12. Similarly, the prayer for injunction restraining the Landlords from in any manner interfering with the suit premises cannot be granted as it would amount to an alteration of the terms of the tenancy without following the procedure under Section 4(2) above. In any case, it would be absurd to issue such an order against a Tenant who is in occupation and use of a suit premises.

Disposition

13. In disposing of this matter, I will therefore make the following orders:-
- a. That the Tenant will clear all the rent arrears within the next sixty (60) days of this Ruling while continuing to pay the current rent.
 - b. That the Tenant failing to pay the rent as ordered in order (a) above, the landlords will be at liberty to levy distress for the said rent.
 - c. The Landlords prayers for eviction and a permanent injunction against the Tenant are DECLINED.
 - d. The Reference by the Tenant is allowed in terms of prayer (a), (b) and (c) above, save that the Tenant will bear the costs of the Reference and the Application.
 - e. This file is ordered closed on the terms above.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER, 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mrs. Shabana for the Landlords and in the absence of the Tenant and Counsel

