



**Eldoret Fine Waters Limited v Mwangi & 2 others (Tribunal Case  
E060 of 2022) [2023] KEBPRT 234 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 234 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E060 OF 2022  
A MUMA, VICE CHAIR  
APRIL 13, 2023**

**BETWEEN**

**ELDORET FINE WATERS LIMITED ..... TENANT**

**AND**

**KARURI MWANGI ..... LANDLORD**

**AND**

**LIGHT A LIFE AGENCY LIMITED ..... AGENT**

**AND**

**ESHIKONI AUCTIONEERS ..... AUCTIONEER**

**RULING**

**A. Parties And Representatives**

1. The applicant Eldoret Fine Waters is the tenant and rented space on the suit property Eldoret Municipality/Block10/98. (hereinafter known as the 'tenant')
2. The firm of Wambua Kigamwa & Co. Advocates represent the applicant/tenant in this matter.
3. The respondent is the landlord and the owner of the suit property and rented out space to the tenant. (hereinafter known as the 'landlord')
4. The firm of C.D Nyamweya & Co. Advocates represent the Landlord/Respondent in this matter.
5. Light a Life Agency Limited is the Agent and has been receiving rent from the tenant on behalf of the Landlord.



## **B. The Dispute Background**

6. The Tenant alleges that on June 8, 2022 they were issued with a Proclamation Notice by Eshikoni Auctioneers through which the landlord sought to levy distress for rent.
7. The Tenant in an attempt to prevent the distress by the landlord, filed a Reference and a Notice of Motion Application dated June 14, 2022 under section 12 (4) of the *Landlords and Tenants (Shops, Hotels and Catering) Establishments Act* Cap 301. The tenant was seeking that the landlord be restrained from harassing them, levying distress and carting away the proclaimed goods pending the hearing and determination of the suit.
8. The matter came up for hearing before the Tribunal on June 16, 2022 where the tenant was granted restraining orders against the landlord
9. The Tenant/Applicant filed a Reference and Notice of Motion Application dated June 14, 2022 in opposition to the Proclamation Notice issued by the Landlord.
10. The tenant also filed a supplementary Affidavit dated September 16, 2022.
11. The Landlord/Respondent has filed a replying affidavit dated August 1, 2022 in opposition to the tenant's application and claims that they had served the tenant with a proclamation notice.

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

12. The issues raised for determination are as follows;
  - a. Whether the procedure of levying distress by the landlord was lawful?

## **D. Analysis And Findings**

### **Whether the procedure of levying distress by the landlord was lawful?**

13. The tenant approached this tribunal by way of the reference and application dated 14<sup>th</sup> June 2022. The same was filed in opposition to the alleged proclamation notice issued by the landlord dated June 8, 2022.
14. The landlord has stated in their replying affidavit that indeed the tenant is in arrears. They however deny the claim that they instructed auctioneers to levy distress against the tenant.
15. The parties herein agree that the relationship between them is a controlled tenancy as they do not have a written agreement. As such the process of distress should be done in accordance with the provisions of Section 12(h) of cap 301 where the landlord should seek leave of the tribunal prior to distress.
16. I have perused the proclamation notice annexed by the tenant in their supporting affidavit and I take note of the fact that the name of the auctioneers under the said document is different from the party sued herein as the auctioneer. The notice indicates the auctioneers as Jomuki Auctioneers and the same is dated November 3, 2020.
17. It is not until the same was highlighted by the landlord that the tenant annexed another proclamation notice, this time under Eshikoni Auctioneers and with the proper date. I find this inconsistency to be questionable and as such I am unable to verify the claim by the tenant that there were attempts by the landlord to illegally levy distress for rent.
18. The above notwithstanding, I acknowledge that the main issue between the parties regards payment of rent and the amount owed to the landlord. The tenant has made attempts to prove their position



by annexing Mpesa Statements, while the landlord has not done the same to prove their claim of Kshs 1,139,260.00

19. It is therefore my finding that before I can determine this matter with finality there is a need to ascertain the status of rent payment from both parties through updated statements of accounts.
20. In light of the foregoing, I therefore proceed to order as follows;

#### **E. Orders**

- a. The upshot is that the Tenant's Application dated June 14, 2022 is hereby partially allowed in the following terms;
- b. The parties shall prepare updated Statements of Accounts showing the rent arrears claimed within 14 days each. The landlord shall commence.
- c. The tenant shall keep paying rent at the rate agreed every month.
- d. The reference will be fixed for Hearing on June 14, 2023.
- e. Costs shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 13<sup>TH</sup> DAY OF APRIL, 2023 IN THE PRESENCE OF KIMARU HOLDING BRIEF FOR NYAMWEYA FOR THE LANDLORD ABSENCE OF THE TENANT.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

