



**Kibuni v Oluoch (Tribunal Case E211 of 2022)  
[2024] KEBPRT 561 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 561 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E211 OF 2022  
N WAHOME & JOYCE MURIGI, MEMBERS  
APRIL 12, 2024**

**BETWEEN**

**FATMA KIBUNI ..... LANDLADY**

**AND**

**DANIS OLUOCH ..... TENANT**

**JUDGMENT**

1. By orders made on the 8<sup>th</sup> August 2023, in Mombasa BPRT case No. E227/2022 and in the present file being E211/2022 were ordered consolidated for purposes of hearing of the references in both files. This file was to be the lead file. The parties further consented to having file No. E007/2021 between the same parties to be brought to this court purely for purposes of information.
2. The parties were further in agreement that the only issue for determination in both the file No. E211/2022 and E227/2022 was the legitimacy of the Notice of termination dated 14/3/2022 and whether the same was in compliance with the law.
3. In a move to effect the said Notice, the Landlord filed the reference dated 21/10/2022. It sought for the following reliefs;
  - i. That I pray for an order declaring that the notice of termination of tenancy dated and filed on the 14/3/2022 has taken effect as there has been no formal reference against it.
  - ii. That the Tenant Danis Oluoch be evicted from the premises and the OCS of Inuka Police Station Likoni to enforce compliance.
  - iii. That the landlord be granted leave to distress for the rent arrears which are yet to be paid by the Tenant and the OCS of Inuka Police Station Likoni enforce compliance.
  - iv. That the costs of the reference be borne by the Tenant.



4. On his part, the Tenant filed the reference dated 2/11/2023. It was his contention that he only came to learn of the notice of termination on the 19/10/2022 while in court from the counsel for the landlady M/S Mawasaa. The same sought for the following relief:-

“I therefore request the Tribunal to investigate the matter and determine the issues involved”.

5. When the matter came up for hearing on the 18/1/2024, the landlord testified as LW1 and thereafter closed her case. Her evidence was to the effect that:-

- i. The Tenant was a serial rent defaulter with rent in arrears at the time of her testimony running into over Kshs.200,000/-.
- ii. The tenant had been served with the termination notice in person but had not responded to the same and the reason she filed the present reference.
- iii. The last payment was to her lawyer on the 25/5/2022 at Kshs.30,000/-.

6. On cross-examination by Mr. Odongo, she stated that:-

- a. The Tenant should pay the rent in arrears and vacate the demised premises.
- b. The Tenant had sued her in E007/21 as she had relocated him to another room to enable her carryout some renovations.
- c. She denied that the premises were only made accessible to the Tenant from a court order in E007/21 which was enforced by the Police.
- d. She denied that the notice dated 14/3/2022 was erased and backdated to meet the legal timelines on termination notices.
- e. Reiterated that the Tenant had not paid rent for 6 months at the time of the notice.

7. The landlady produced her list of documents dated 29/9/2023 as Exhibits Nos. 1-6 both inclusive.

8. On his part, the Tenant testified on the 8/2/2024 as TW1 and closed his case thereafter. His evidence was that:-

- i. The landlady had continuously interfered with his tenancy leading to the filing of E007/2021 which reinstated him into the demised premises.
- ii. She had also declined to take and/or receive rents from her or her advocates leading to a request to the court to be allowed to deposit the same in the court.
- iii. After the premises were re-opened by an order of the court, he found some items missing. He deals with 2<sup>nd</sup> hand/used items. The report on the losses was made at Likoni Police Station.
- iv. The notice of termination dated 14/3/2024 was never served on him and he only came to learn of the same in court on the 19/10/2022.
- v. On learning of the notice of termination, he filed the reference in E227 of 2022. He does not have any rent in arrears.

9. On Cross-examination by the Landlord's counsel, the Tenant stated that:-

- a. By a letter dated 10/5/2022, he admitted to being in rent arrears at Kshs.64,000/- by then. He immediately paid Kshs.30,000/- leaving a balance of Kshs.34,000/-.



- b. He got the order to pay rent to the tribunal in May, 2022 but at the time of his testimony in court he had only paid Kshs.50,000/- out of the payable rent for the period between May, 2022 and February 2024 at Kshs.160,000/- leaving a balance of Kshs.110,000/-.
  - c. In total, the rent arrears as at February, 2024 was Kshs.144,000/-.
10. On Re-examination by the Tenant stated that:-
  - i. Out of the initial rent arrears of Kshs.64,000/- as at May, 2022 the only amount left owing was Kshs.14,000/-.
  - ii. He therefore contended that as at February, 2024 he only owed Kshs.124,000/- and not Kshs.144,000/-.
  - iii. The letter dated 10/5/2022 was categorical that the rent arrears had accrued by the action of the landlord and his lawyer declining to receive the same from him.
  - iv. He alleged that this was to create grounds for termination by the landlady.
  - v. He has never been in rent arrear for 6 months at anytime.
11. I have perused the submissions by the landlord dated 19/2/2024 and those by the Tenant dated 29/2/2024 and have taken due cognizance and regard of the same in writing this judgement.
12. In my view, the only issues necessary in determination of this suit is whether the notice of termination of tenancy dated 14/3/2024 is lawful, whether the landlady should be granted leave to levy distress and who should bear the costs of this suit.
13. It is the contention of the Tenant that he only became aware of the termination notice on the 19<sup>th</sup> October 2023. This was during a court attendance when the information was passed to his counsel by the counsel for the landlady. On receiving the information he by his reference dated 2<sup>nd</sup> November 2022 filed case no. E211 of 2022 challenging the said notice.
14. By this time, the notice had along taken effect on the 14<sup>th</sup> May 2022. I have looked at the Affidavit of service of the said notice by one Fredrick Omondi Osino sworn on the 21/10/2022. I note that the Tenant never signed the same. It is also inexplicable that the counsel for the Tenant was writing the letter dated 10/5/2022 on how to settle the rent arrears and re-establish goodwill in the parties relationship if he or his client knew of the Notice of termination.
15. The letter by Mr. Mwawasaa dated 24<sup>th</sup> May 2022 does not help to validate the notice of termination. Though the termination was to have ideally taken effect on the 14<sup>th</sup> May 2022, there is no mention of such termination. The counsel for the landlord is addressing the Applicant/Tenant as their effective Tenant.
16. Effective service of the notice of termination is a cardinal requirement to validate the same and give it the legitimacy that it calls for. The court must always satisfy itself that service was done properly.
17. From the engagements between the parties, including the filing of E007/2021 and E227/2022 by the Tenant, I doubt that he would have ignored the termination notice herein if the same was brought to his notice. I would therefore determine that the notice of termination dated 14<sup>th</sup> March 2022 was never brought to the attention of the Tenant and is therefore unlawful and of no legal effect.



18. It is trite law that the leave of this court or any other court for that matter is not required for distress for rent to be effected. Section 3 of the [Distress for Rent Act](#) provides that:-

“subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears and due upon a grant, lease demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case”.

19. In the case of [John Nthumbi Kamwithi – vs- Asha Akumu Juma](#) Civil appeal No. 7A of 2016 at Embu the court held that:-

“I have perused the Act but I find no provision to the effect that such permission be sought. I find that the appellant had no obligation to seek permission from the tribunal to levy distress”.

20. The position of the law is that for this right to distress for rent to accrue there must be rent in arrears. There is no dispute that at the time of the impugned notice there was rent in arrears of at least Kshs.14,000/-.

21. However, in the circumstances of this case and in view of the powers of the court as donated by Section 12(1) of the Act I will allow the Tenant 30 days to settle all the rent in arrears now at Kshs.140,000/- inclusive the month of April, 2024. In default the landlord will be at liberty to distrain in recovery of the rent arrears.

22. On the issue of costs, the parties filed the references dated 21/10/2022 and 2/11/2022. They both have succeeded in one way or another. I would direct that each party do bear own costs of the consolidated suit.

23. In the final analysis, the orders that commend themselves to me are the following:-

- i. The notice of termination of Tenancy dated 14/3/2022 is declared unlawful and of no legal effect.
- ii. That the Tenant will settle all the rents in arrears at Kshs.140,000/- in 30 days of the date hereof and in default, the landlady will be at liberty to levy distress in recovery thereof.
- iii. That each party will bear own costs of the consolidated suit.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. NDEGWA WAHOME MBS**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of Mr. Odongo for the Tenant and Mr. Mwawasaa for the Landlord.

**HON. NDEGWA WAHOME MBS**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**



**12<sup>TH</sup> APRIL 2024**

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**HON. JOYCE MURIGI**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**12<sup>TH</sup> APRIL 2024**

