



**Nyongu v Waweru (Tribunal Case E817 of 2023)  
[2024] KEBPRT 1069 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1069 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E817 OF 2023  
CN MUGAMBI, CHAIR  
JULY 24, 2024**

**BETWEEN**

**MARY THAMA NYONGO ..... APPLICANT**

**AND**

**DOMINIC STONEY WAWERU ..... RESPONDENT**

**RULING**

1. On 19.4.2024, the motion by the Landlord dated 08.04.2023 was fixed for hearing on 29.04.2024. On 29.04.2024, the court issued directions on the hearing of the Application and fixed the same for mention on 31.05.2024.

On 31.05.2024, the court ordered the preliminary objection and the Application to be heard together. The parties were further directed to file written submissions within fourteen (14) days.

On 13.06.2024 when the matter came up for mention, none of the parties attended and the Ruling was fixed for 15.07.2024.

2. I have had the benefit of perusing the court file and I do note the following:-

- a. That on 24.8.2023, the Landlord's Application dated 21.08.2023 was fixed for hearing on 19.9.2023. On 19.9.2023 when the Application came up for hearing, the court made the following orders:-

“The Notice of motion dated 21.8.2023 is allowed as follows;

- i. Prayer (2) but without the component of interest.
- ii. Prayer (3) in its entirety.
- iii. Prayer (5) in its entirety.



The Applicant requires to do the necessary to effect prayer (4) of the motion. The Applicant will fix the Reference herein for hearing on priority.”

The upshot of this order by the court is that the following orders were issued;-

- a. That the Landlord was granted leave to levy distress for rent arrears amounting to Kshs. 1,540,000/= without the interest of 5% prayed for.
  - b. That the Tenant was prohibited/restrained from recovering any assets from the premises.
  - c. That the police assistance requested for was granted.
3. On 8.11.2023, the Landlord filed another Application wherein she prayed that the court be pleased to waive the 10% duty filing fees on distress. The court record indicates that this Application was allowed on 27.11.2023 and the file closed by Hon. Makori.
4. It is therefore clear that by the time the Landlord was filing the Application dated 08.04.2024, this matter had already been closed by the Tribunal as the only prayer disallowed was that one of eviction and for which the court had ordered the Landlord to take the necessary steps to effect. In any case, I also note that the Application dated 08.04.2024 is on all fours with the one dated 05.04.2023 save that the rent demanded has now been changed to Kshs. 1,960,000/= up from Kshs. 1,540,000/=.
- The motion dated 08.04.2024 would therefore not be one for granting in the circumstances and borders on being, if not actually res judicata.
5. It is my finding therefore that this matter was concluded by the orders of Hon. Makori issued on 27.11.2023 as read together with orders issued by Hon. Ndegwa on 19.09.2023 and in view of the life and validity of the said orders, the Tenant cannot challenge the same by way of a notice of preliminary objection.
6. Consequently, the Preliminary objection by the Tenant is dismissed and for the avoidance of doubt, this matter is closed and remains closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF JULY, 2024.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Chege for the Respondent and in the absence of the Applicants and Counsel.

