



**Evans & 2 others v Prime Choice Motors Ltd (Tribunal Case
E168 of 2023) [2023] KEBPRT 1146 (KLR) (4 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1146 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E168 OF 2023
M MAKORI, MEMBER
DECEMBER 4, 2023**

BETWEEN

ELIZABETH WANJIRA EVANS 1ST APPLICANT

CHRISTINE WANGARI 2ND APPLICANT

AND

MARY WANJIKU LANDLORD

AND

PRIME CHOICE MOTORS LTD TENANT

RULING

1. The applicants filed an application dated 12/9/2023 seeking leave to levy distress against the Tenant/Respondent for a total amount of Kshs 15,600,000/=
2. The Tenant/Respondent file a Replying Affidavit dated 3/10/2023 and denied the averments of having arrears of Kshs 15,600,000/=. He averred the rent payable is Kshs 19,000/= and which he has constantly paid without failure.
3. In what I would call a sudden turn of events, Mary Wanjiku who is nabbed as the Landlord and whose name appears on all the leases produced swore an affidavit in opposition of the 1st Applicant's application dated 12/9/2023.
4. In her affidavit labeled "Supplementary Affidavit" all the averments in the affidavit do not seem to supplement the Applicants' case but it rather tears it down and/or apart.
5. According to Mary Wanjiku who is also labeled as the landlord, the valid lease is one dated 17/9/2004 and that the lease produced by the 1st Applicant is a forgery as she never even executed it.



6. Though the record seems untidy on the part of the applicants and Landlord the only issue that commends itself for determination is whether the Applicant's application to levy distress against the Tenant/Respondent is merited?
7. Section 4(1) of [Cap 301](#) provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
8. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7. The grounds stated under this provision and which are applicable herein include; -
 - i. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
 - ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy; and
 - iii. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises.
9. That it is the Applicant's contention that upon nonpayment of Rent arrears by the Tenant/Respondent, she decided to levy distress over the suit property. The right to levy distress is reserved under section 3 of the [Distress for Rent Act](#), Cap 293 of the Laws of Kenya, which provides; -

“subject to the provisions of this Act and 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.”
10. In seeking to make the appropriate orders in view of the foregoing, I am guided by section 12(1)(e) of [Cap 301](#) which grants the Tribunal power; -

“To make orders upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits which orders may be applicable to any person whether or not he is a Tenant, being at any material time in occupation of the premises comprised in a controlled tenancy.”
11. Before concluding this ruling, I wish to adopt what the superior court stated in the case of [Samuel Kipkori Ngeno & Another – vs- Local Authorities Pension Trust \(Registered Trustees\) & Another](#) (2013) eKLR at paragraphs 9 and 12 as follows: -
 - “9. A tenant's first and main obligation is to pay rent as and when it becomes due, for the Landlord has the right to an income from his investment....”
 - “12 ... He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due”.



12. A contradicting record exist from parties that should essentially be speaking from the same side of story. What this court is yet to resolve is what would be the motivation of parties to present contradictory evidence on the same issue.
13. Mary Wanjiku account corroborates that of the Tenant/Respondent while the Applicants' account stands disputed from two fronts. From the Tenant/Respondent and by Mary Wanjiku.
14. The contradicting accounts calls into question the locus of the Applicants as compared to the position that Mary Wanjiku holds. From the purported leases that have been presented, it is Mary Wanjiku who executes them.
15. In the Supplementary Affidavit dated 3/10/2023 Mary Wanjiku deponed that she has always been the landlord for all that parcel of land known as Nakuru Municipality Block 4/259 which therefore diminishes all the mandates the other parties have in claiming as landlords.
16. The upshot of my analysis and interrogation of material before court is that the Notice of Preliminary Objection dated 4/10/2023 is merited and allowed.
17. I as thus strike out the notice of Motion Application dated 12/9/2023 with costs to be borne by 1st and 2nd Applicants.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DECEMBER, 2023.

HON. MIKE MAKORI (MR.) - MEMBER 4.12.2023

In the presence of;

Mr. Mureithi for the Tenant/Respondent

Ms. Wanjera – the landlord

Mr. Waiganjo for the 3rd Applicant

