



**Wairimu v Johari Real Estates Limited & 2 others (Tribunal Case
E348 of 2023) [2023] KEBPRT 1318 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1318 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E348 OF 2023
P MAY, MEMBER
OCTOBER 18, 2023**

BETWEEN

PETER MUKORA WAIRIMU TENANT

AND

JOHARI REAL ESTATES LIMITED LANDLORD

AND

TERESIA MUYA AGENT

AND

BRAIFUS AUCTIONEERS AUCTIONEER

RULING

1. The tenant approached the Tribunal by filing the reference dated 3rd April, 2023 seeking protection against the landlord who had threatened to evict him and had confiscated his motorcycle. The tenant owing to the urgency, had on an even date filed an application under certificate seeking for a plethora of orders including orders of temporary injunction. The application was placed before the Tribunal whereby prayers 1,2, and 6 were allowed pending the inter- parties hearing.
2. The landlord upon being served with the application and orders issued moved to file a notice of motion filed under certificate seeking to set aside the orders issued on 3/4/2023.
3. The parties were directed to canvass the applications simultaneously by way of written submissions. There has been compliance by both parties.
4. The tenant has through their pleadings stated that he entered into the tenancy relationship with the landlord sometimes in 2021 and has always paid rent as when it fell due. He stated that the actions of



- the landlord of confiscating his motor cycle were illegal. The tenant therefore urged the Tribunal to allow the application and reference.
5. The respondents filed very brief submissions. They stated that the confiscation was based on an agreement with the auctioneer. They therefore reiterated that the tenant was not deserving the orders sought.
 6. In view of the above, it is clear that the Tribunal has to consider the merits of the tenant's application in light of the undisputed proclamation commenced by the landlord.
 7. As was stated by the Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR:

“A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...”
 8. The question which arises is whether this tribunal has jurisdiction to order for the levy of distress against a tenant who is in rent arrears and the answer to the question is to be found in Section 12(1) (h) of the Landlord and Tenant (Shops, hotels and catering establishments) Act, Cap. 301 which provides as follows: -

(h) to permit the levy of distress for rent;
 9. The process of levying distress for controlled tenancies requires one to obtain the consent of the Tribunal. The Landlord failed to obtain such consent and therefore the process undertaken by the agent was one that was not sanctioned by the Tribunal.
 10. In determining whether Landlord's right to levy distress had crystallized, I am guided by the decision in Owayo vs. George Hannington Zephaniah Aduda t/a Aduda Auctioneers and another (2007) 2 KLR 140, (2008) EA 287, where the Court of Appeal considered section 3(1) of the Distress for Rent Act and the English common law in dealing with the question of what constitutes illegality for distress for rent. It was stated that an illegal distress is one where there was no right to distrain or where a wrongful act was committed at the beginning of the levy thereby invalidating all subsequent proceedings. The instances of illegal distress were cited as: where distress is by a landlord who has parted with his reversion, distress by a person in whom the reversion has not vested, a distress when no rent is in arrears, a distress for a claim or debt which is not rent, distress after a valid tender of rent has been made, a second distress for the same rent, distress off the premises or on a highway, distress at night and a distress carried out contrary to the law relating to Distress.
 11. The tenant has acknowledged to being in rent arrears. He has however offered to clear the said rent arrears by way of instalments. The landlord has not opposed the same.
 12. 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.”
 13. In light of the above, I shall make the following orders:



- i. The 3rd Respondent is restrained from proclaiming, attaching and or selling the applicant's motor cycle registration no. KMFV 193 Y.
- ii. The tenant shall pay rent to the landlord as when it falls due and from the Month of November shall pay an additional sum of Kshs. 25,000/= monthly to offset the outstanding rent arrears. In default the landlord will be at liberty to levy distress without any reference to the Tribunal.
- iii. The OCS Juja Police Station to assist in compliance of these orders
- iv. This ruling settles the reference dated 3rd April, 2023.
- v. Each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF OCTOBER 2023.

HON. P. MAY - MEMBER

18.10.2023

In the absence of the parties

