



**Daudi v Mule t/a Yatta Runeral Home (Tribunal Case E582 of 2023)  
[2024] KEBPRT 1556 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1556 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E582 OF 2023  
P MAY, MEMBER  
OCTOBER 22, 2024**

**BETWEEN**

**NICHOLAS KATHUMO DAUDI ..... LANDLORD**

**AND**

**GIDEON MULE T/A YATTA RUNERAL HOME ..... TENANT**

**RULING**

1. The litigation history in the present proceedings has been checked. The Tribunal has time and again, just like at this instance been called to determine interlocutory applications. The last ruling that was rendered by the Tribunal was delivered on 27<sup>th</sup> February, 2024. The ruling in summary declined the tenant's application for stay and review of the orders issued vide the ruling delivered on 1<sup>st</sup> August, 2023.
2. Once again, the tenant was aggrieved by the actions of the landlord after the delivery of the said ruling and filed an application under certificate on 4<sup>th</sup> June, 2024. The tenant was sought for orders against the landlord from levying distress. They maintained that there did not exist a landlord and tenant relationship hence the actions of the landlord of levying distress were grossly illegal and irregular.
3. The landlord opposed the application through the replying affidavit filed 19<sup>th</sup> July, 2024. The landlord admitted to having instructed the auctioneers to levy distress as the tenant had fallen into rent arrears. The landlord denied knowledge of the order of the Tribunal for rent to be deposited in a joint account.
4. The parties elected to canvass the application by way of written submissions. There has been compliance from both parties. The tribunal has considered the application, the response thereto and the submissions on record and would proceed as follows:
5. At the onset, the Tribunal has to tread cautiously so as not to deal with the substratum of the dispute even before the parties adduce evidence and cause a miscarriage of justice. The Tribunal just like in



the previous rulings has to exercise restraint to balance the competing commercial interests between the parties.

6. The submissions filed by the parties have centered on the application for orders of temporary injunction. The prayers sought in the present application by the tenant are those for orders of temporary injunction. The power to grant a temporary injunction is discretionary. In this regard, the Tribunal shall rely on the locus classicus case of; *Giella v Cassman Brown & Co. Ltd* [1973] E.A 385, which outlined the conditions for the grant of a temporary injunction to the effect that; first, an applicant must show a prima facie case with a probability of success, secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. And thirdly, if in doubt, the court will decide an application on the balance of convenience.
7. On whether the landlord shall suffer irreparable harm which cannot be adequately compensated by way of damages, the tribunal draws guidance from the case of; *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR wherein it was stated;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”
8. The Tribunal in a bid to protect the landlord from suffering loss in the event he is successful made an order for rent to be deposited in a joint account. I believe this is sufficient cushion even as the Tribunal is concerned by the slow pace in which the parties have taken in prosecuting the reference. The orders issued previously were meant to provide good order during the pendency of the proceedings.
9. It is clear from the above that allowing the landlord to levy distress at this stage will militate against the efforts to determine this dispute conclusively in a fair and just manner.
10. In the end, the Tribunal will issue the following orders:
  - a. The tenant’s application dated 4<sup>th</sup> June, 2024 is allowed in terms of prayer (iv).
  - b. The parties shall comply with the directions contained in the ruling delivered on 27/2/2024.
  - c. The parties to file paginated bundle of statements and documents to be relied on during the hearing of the reference within 7 days from the date hereof.
  - d. The reference to be fixed for hearing on priority basis.
  - e. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF OCTOBER, 2024.**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the absence of the parties

