



**Mutemi v Tailor (Tribunal Case E014 of 2022)
[2023] KEBPRT 64 (KLR) (Civ) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 64 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E014 OF 2022
A MUMA, VICE CHAIR
FEBRUARY 27, 2023**

BETWEEN

TERESIAH MUTEMI APPLICANT

AND

DR ANIL R. TAILOR LANDLORD

RULING

A. Parties and Representatives

1. Teresiah Mutemi is the Tenant and rented space on the suit premises known as Gusii Plaza Building, Room 213 for the business. (hereinafter known as the ‘tenant’)
2. The Tenant appears in person.
3. The Respondent Dr Anil R. Tailor is the Landlord and rented out space for the business in the suit premises to the Tenant. (hereinafter the ‘landlord’)
4. The firm of Kiyondi Nyache Advocates represent the Landlord in this matter.

B. The Dispute Background

5. The Tenant has filed a Reference dated March 24, 2022 as well as a Notice of Motion Application dated April 28, 2022 seeking that the Landlord be restrained from selling and/or disposing the confiscated goods and also from evicting or in any other way interfering with the Applicant’s quiet occupation of the suit premises.
6. On May 5, 2022, this Tribunal issued restraining orders against the Landlord and his agents.



7. The Landlord filed a Notice of Motion dated March 16, 2022 seeking to stay orders issued by this honorable tribunal on grounds that the same were procured through material non-disclosure of the proceedings in Kisii Miscellaneous Application Number 17 of 2022 that raised similar issues.
8. On May 18, 2022, this Tribunal issued ordered against the Tenant to *inter alia* pay rent for the months of April, May and June 2022.
9. The Landlord subsequently filed a Replying Affidavit dated June 6, 2022 where he stated *inter alia* that the Tenant owed him rent arrears of Kshs 380,000/= on oath and that the application dated April 28, 2022 is an abuse of court process and deserves to be struck out with costs.
10. On June 14, 2022, this Tribunal issues a number of orders which included that the Tenant to withdraw the Magistrate's Court matter and the confiscated goods be released by the Landlord within 24 hours of the withdrawal of the matter before the Magistrate's Court. It was also ordered that the Tenant enjoys quiet possession.
11. The Tenant then filed a Notice of Motion dated September 8, 2022 under a Certificate of Urgency followed by a Further Affidavit dated September 12, 2022 seeking that the Landlord be held in contempt for defying the Orders issued on June 14, 2022 and in particular order 5.
12. The Landlord filed a Notice of Preliminary Objection and a Replying Affidavit both dated September 29, 2022 where he stated among other things that this Tribunal lacks jurisdiction to entertain the Application for contempt.
13. The Tenant filed a Replying Affidavit dated October 18, 2022.

C. List of Issues for Determination

14. It is the contention of this Tribunal that the issues raised for determination are as follows;
 - I. Whether this Tribunal has jurisdiction to cite the Respondent for contempt for disobeying the Tribunal's orders given on September 15, 2022.

D. Analysis and Findings

15. The *Landlord and Tenant (Shops, Hotels and Catering Establishments)* Cap 301 (hereinafter referred to as the "Act") is the relevant statute that governs the disputes arising from the agreements that relate to business premises such as the one before this Tribunal.
16. In order to deal with the issue outline above, the powers of the Tribunal are provided under section 12 of the Act as follows;

A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power –

- (e) 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;
- (h) to permit the levy of distress for rent;



- (4) In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.
- (6) Any person who, without lawful excuse, fails to comply with any order, requirement or summons given or issued under paragraph (j) of subsection (1) of this section, or who, having attended as a witness under summons, departs without the permission of the Tribunal or fails to attend after any adjournment after being ordered to attend, shall be guilty of an offence and liable to a fine not exceeding one thousand shillings. (Emphasis added)
17. The Landlord did not seek leave of this Tribunal before levying for distress for rent. The said distress was made in the withdrawn matter serialized as Kisii Miscellaneous No 17 of 2022 and therefore was not done in accordance with the procedure under the Act.
18. I therefore find that the Landlord's distress for rent was unprocedural and was not sanctioned by this Tribunal and is therefore invalid.
19. Accordingly, the only instance where this Tribunal lacks jurisdiction to deal with disputes arising from business premises related to controlled tenancies is where it involves matters that are criminal in nature. This is provided under section 12 (2) of the Act which provides;
- “A Tribunal shall not have or exercise any jurisdiction in any criminal matter, or entertain any criminal proceedings for any offence whether under this Act or otherwise.”
20. The Landlord has defied the orders of this Tribunal in the course of the civil proceedings herein and therefore the Tribunal can assert its authority and power over him as provided in the Act.

E. Orders

21. The upshot is that;
- a) The Landlord's Notice of Preliminary Objection dated September 29, 2022 is dismissed.
 - b) The Tenant's application dated March 28, 2022 is upheld and orders of the Tribunal dated June 14, 2022 stand.
 - c) The Landlord to pay a fine a fine of Kenya Shillings Ten Thousand only (Ksh 10,000/=) within seven (7) days of this Ruling.
 - d) Tenants Goods be returned immediately after which the Tenant shall keep paying rent from March 2023 as and when it falls due.
 - e) In the event that there is another tenant in the building the Tenant will be at liberty to file for assessment of damages within this cause.
 - f) Mention for compliance May 4, 2022.
 - g) The OCS Kisii Police Station to ensure compliance of the orders given above.
 - h) Costs in cause.

HON A MUMA



VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon A Muma this 27th Day of February 2023 in the presence of Teresiah the Tenant in person and in the absence of the Landlord.

HON A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

