



**Musembi v Ol Tepesi Properties Ltd & another (Tribunal Case
E076 of 2024) [2024] KEBPRT 802 (KLR) (Civ) (29 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 802 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E076 OF 2024
CN MUGAMBI, CHAIR
MAY 29, 2024**

BETWEEN

MORRIS KYULE MUSEMBI TENANT

AND

OL TEPESEI PROPERTIES LTD LANDLORD

AND

MORAN AUCTIONEERS AUCTIONEER

RULING

1. The Tenant's Application dated January 23, 2024 seeks an order that a temporary injunction be issued restraining the Respondents from attaching or selling the Tenant's goods or locking the suit premises pending the hearing and determination of the Tenant's Complaint. The Tenant has also sought the assistance of the OCS Shauri Moyo Police Station in ensuring compliance with the court orders.

The Tenant's depositions

2. The Tenant's affidavit in support of the Application sworn on 23.1.2024 may be summarized as follows:-
 - a. That the Applicant is the Respondent's Tenant in the premises known as LR No. 209/4361/1 and LR No. 209/4365/2 (hereinafter "the suit premises") at a monthly rent of Kshs. 24,700/=.
 - b. That the Tenant has dutifully paid his rent as and when it fell due including January, 2024.
 - c. That on January 15, 2024, the Landlord locked the Tenant's premises without cause and instructed auctioneers to levy distress for rent.



- d. That the Landlord ought not to have embarked on any of his activities without the sanction of the Tribunal.

The 1st Respondent's/Landlord's depositions

3. The Replying affidavit sworn by Imitia Khan a director of the 1st Respondent/Landlord may be summarized as follows:-
- a. That the Tenant's Application is marred with outright misrepresentation of facts, vexatious and an abuse of the court process.
 - b. That by a lease executed by the Tenant on 18.1.2018, the Tenant was to pay a monthly rent of Kshs. 45,000/= for the suit premises.
 - c. That the Landlord has never locked the Tenant's premises and the photographs by the Tenant are a misrepresentation of the premises.
 - d. That the Landlord has not varied any of the terms of the lease agreement since the Applicant moved into the premises.
 - e. That as at January, 2014, the Tenant was in rent arrears in the sum of Kshs. 467,217/=.
 - f. That the Mpesa and bank statements annexed to the Tenant's affidavit are excerpts from his personal accounts and not part of the payment of rent.
 - g. That on December 22, 2023, the Landlords issued a demand letter to the Tenant for the payment of Kshs. 360,687/= in rent arrears and when the Tenant failed to pay the said rent arrears, the Landlord instructed the 2nd Respondent to levy distress for the same.
 - h. That it is the action of the 2nd Respondent that roused the Applicant from his slumber.
 - i. That the suit premises remain open.
 - j. That the Tenant as at April, 2024 owed the landlord Kshs. 558,747/= as per the attached statement of the Tenant's rent account.

Analysis and determination

4. The only issue that arises from the Tenant's Application is whether the Tenant is entitled to the orders sought in his Application.
5. The determination of the Application revolves around the issue whether indeed the Landlord had locked the Tenant's suit premises and whether the Tenant is in rent arrears.
6. It is the Landlord's case that as at April, 2024, the Tenant owed rent in the sum of Kshs. 638,747/=. In support of this allegation, the Landlord has annexed an elaborate statement of the Tenant's rent account and which the Tenant has not materially challenged. I also note that in the replying affidavit by the landlord, the Landlord had as early as December 22, 2023 made a demand to the Tenant for the payment of rent arrears in the sum of Kshs. 360,687/=. In the same affidavit, the landlord had also annexed a rent statement showing the Tenant was in rent arrears amounting to Kshs. 467,217/= as at January, 2024. The Tenant does not challenge these depositions by the Landlord. In these circumstances, I do find on a balance of probabilities that indeed the Tenant was and remains in rent arrears.



7. The Landlord has denied locking the suit premises and seems to suggest that the evidence produced by the Tenant is of a different premises as the Tenant's premises have always been open. Both parties have produced photographs in support of their respective positions, it is the word of the Tenant against that of the Landlord and I will therefore only observe that the Landlord has no legal basis to lock the suit premises absent a valid court order. I will let this issue rest at that.
8. The relief sought by the Tenant is an equitable relief. I have already found that the Tenant came to court while he was in rent arrears. Is he entitled to the equitable relief in the circumstances?

In the case of; *Samuel Kipkorir Ng'eno & Another v Local Authorities Pension Trust (Registered Trustees) & Another* [2013] eKLR, the court held as follows;-

“The Temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is undeserving of 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.”

9. In the circumstances, I do make the following orders:-
 - (a) That the Landlord is enjoined from evicting the Tenant and from locking the Tenant's premises without following the due process under Section 4 of Cap 301.
 - (b) That the Landlord is at liberty to levy distress for the rent arrears using a licensed auctioneer.
 - (c) that the Tenant shall bear the costs of the Application.

Ruling dated, signed and delivered virtually this 29th day of May, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Oronga for the Tenant and Mr. Torotwa for the Landlord

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