



**Nyawade t/a Jacqueline Boutique v Kenya Conference Catholic Bishops;  
Odhiambo t/a Nailicious Nail and Beauty Supply (Objector) (Tribunal  
Case 253 of 2018) [2024] KEBPRT 798 (KLR) (10 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 798 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 253 OF 2018  
CN MUGAMBI, CHAIR  
MAY 10, 2024**

**BETWEEN**

**BETTY JACQUELINE NYAWADE T/A JACQUELINE BOUTIQUE ..... TENANT**

**AND**

**KENYA CONFERENCE CATHOLIC BISHOPS ..... LANDLORD**

**AND**

**ANNE AKOTH ODHIAMBO T/A NAILICIOUS NAIL AND BEAUTY  
SUPPLY ..... OBJECTOR**

**RULING**

**Introduction**

1. The notice of motion by the Applicant/Objector dated 26.2.2024 seeks orders that;
  - a. The execution by the plaintiff/decreed holder by way of attachment and intended sale of the said assorted goods by M/S Garam Investments, be set aside and an order be issued prohibiting any such subsequent mode of execution in enforcement of the decree by way of attachment of the said assorted goods, unless and until the Objector's legal and equitable interest in the same is either discharged or the debt secured by the said motor vehicle is settled.
  - b. That the decreed holder be ordered to bear the costs of this Application and the auctioneers be ordered to bear their own costs.
2. The Application is supported by the Affidavit of Anne Odhiambo, the Objector sworn on 26.2.2024 and which I summarize as follows:-



- a. That on or about July, 2015, the Objector entered into a sub-lease agreement with the Tenant/Judgment debtor at an agreed monthly rent of Kshs. 20,000/=.
  - b. That the agreement between the Objector and the Tenant/Judgment debtor allowed the Tenant to occupy a partition within the shop and therein to display her work.
  - c. That on 2016, the Objector learnt that the Tenant was not remitting rent to the Landlord and upon this discovery, the Objector entered into an agreement directly with the Landlord.
  - d. That the Objector wrote an e-mail to the then property manager of the Landlord requesting to be allowed to continue remitting rent as the Landlord sorted its issues with the Judgment debtor/Tenant; the Landlord's agents agreed.
  - e. That since 2016, the Objector has been paying rent directly to the Landlord through its appointed agents NW Realite Ltd and Regent Management Ltd and continued to faithfully pay the said rent.
  - f. That on 21.2.2024, the Landlord instructed M/S Garam Investments, Auctioneers, to levy distress, they proceeded to confiscate the Objector's goods in the suit premises.
  - g. That the Objector has a legitimate right to seek the orders sought in the instant Application in exercise of her rights over the said goods.
  - h. That the Landlord and the Auctioneers are aware of the Objector's in the said goods as the Objector occupies a definite portion of the suit premises and the Landlord and the Objector have been in a long tenancy relationship.
3. The Objector has also filed a notice of Objection to attachment and sale where the Objector has stated that the Tenant/Judgment debtor has no proprietary interest in the attached goods by virtue of the fact that her business was independent from that of the Objector, or otherwise and thus her interest thereon is not capable of being attached and/or sold in satisfaction of the decretal sum herein or any other debt payable by them.

### **Analysis and determination**

4. The only issue that arises for determination is whether the Objector/Applicant is entitled to the orders sought in her Application.
5. I do note that the Application has not been opposed by the Tenant and the Landlord/judgment creditor and therefore all the factual statements set out by the objector have not been controverted.
6. I have seen correspondence, from the Objector dated 7.3.2018 and 15.11.2018 wherein the Tenant requested to be allowed to be paying her rent directly to the Landlord in view of the discovery that the Tenant was not remitting rent to the Landlord.
7. I have also seen an email from NW Realite, the Landlord's agents addressed the Objector in the following terms;-
 

“Further to our telephone conversation earlier, kindly organize to pay the rent on Jacqueline's account to our bank details as indicated below, then forward slip to our offices for receipting.”
8. The landlord, by the conduct of its agents seem to have accepted to receive the Objector's rent directly. Although the Objector was paying on the Tenant's account, from the material placed before the



Tribunal, the Objector could only have been paying for the space she occupied and not the entire suit premises as it appears to be that the Tenant was also occupying the premises.

9. The landlord having been served with the notice of objection to the attachment and the Application herein and having failed to respond to the same, it is my finding that both the Objection and the Application have merits and I raise the attachment as provided for under order 22 Rule 53 of the Civil Procedure Rules.
10. Consequently, I do make the following orders;-
  - a. That the execution by way of attachment and intended sale of the Objector's assorted goods by M/S Garam Investments is hereby set aside.
  - b. That M/S Garam Investments Auctioneers are hereby ordered to release the Objector's goods unconditionally.
  - c. That the Landlord will bear the Auctioneer's charges if ANY and the Objector's costs

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10<sup>TH</sup> DAY OF MAY, 2024**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

