



**Muiruri v Akinyi (Tribunal Case E173 of 2023)
[2024] KEBPRT 808 (KLR) (4 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 808 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E173 OF 2023
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JUNE 4, 2024**

BETWEEN

GODHARD MUIRURI APPLICANT

AND

BEATRICE AKINYI RESPONDENT

RULING

1. This matter is for Ruling on the rent payable on the demised premises. The landlord claims that the monthly rent is Kshs.8,000/-. The Tenant disputes the same. It is her case that the rent payable is Kshs.7,000/- and that she had never paid the arbitrarily increased rent at Kshs.8,000/- per month.
2. It is our view that on resolution of the issue of the rent payable on the demised premises, this matter will have been effectively settled. There is no dispute from the landlord that at one point, the monthly rent payable on the demised premises was Kshs.7,000/-.
3. There is no evidence that the law was over activated to graduate the rent payable on the demised premises to Kshs.8,000/-. No evidence was offered by the Landlord to the payment of the impugned rent by the Tenant. Indeed the Tenant denied having ever paid the Kshs.8,000/- which she termed as unlawful.
4. The purported notice for increment of rent is to be found in the Replying Affidavit by the Tenant and marked "BA 1" the same was in the following words:-

“This is to advise that your rent will be increased to Kshs.8,000/- kindly adjust accordingly and pay your rents on time”.
5. In our view, that cannot be an effective notice as envisaged by Section 4(2) of the [Landlord and Tenant \(shops, Hotels and Catering establishments\) Act](#) (Cap 301) hereinafter “the Act”



Section 4(2) thereof provides that:-

“A Landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the Tenant under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.

6. Regulation 4 (1) of the Regulations to the Act clarifies on the form that such notice is to take. It provides that:-

“A notice under Section 4(2) of the [Act](#) by a landlord shall be in the form set out in the schedule to these Regulations”.

7. The letter purported to be a notice did also not give the minimum of 60 days as envisaged by the law. The same was dated 2nd April 2024 and it was to take effect on the 30th June 2022. It is not even indicated the date when the same was received by the receiving party.
8. The purported notice also did not state the grounds that informed the rent increment pursuant to the requirements of Section 7 of the Act. In all, the said notice fell short of the threshold set for such notices as per the law and also pursuant to decided cases led by the locus classicus case of [Fredrick Mutua Mulinge T/A Kitui uniform v Kitui Teachers Co-operative Society Ltd](#) (2017) e KLR where it was emphasized that the provisions in the Act are for strict compliance with the same.
9. It is therefore our determination that the purported notice of increment of rent dated 2nd April 2022 was unlawful and of no legal effect. It then follows that the rent in arrears as at April, 2023 was Kshs.53,000/-. This is an amount that the landlord was entitled to from the Tenant at the monthly rent of Kshs.7,000/-.
10. The Landlord had in his application dated 10th July 2023 sought for the termination of the tenancy. This prayer would fail without much ado as no termination notice had been issued to the Tenant as envisaged under the [Act](#) and in particular Section 4(2) and Regulation 4(1) of the Regulations to the Act.
11. A prayer was made for leave to levy distress. However it is now well settled that a landlord does not require permission of this Tribunal or any court to effect the levy of distress. It is an inherent right to him which is activated by the accrual of rents in arrears.

Section 3(1) of the [distress for Rent Act](#) provides that:-

“subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears and due upon a grant, lease, demise or contract shall have the same remedy by distress for recovery of that rent or rent service as is given by the common law of England in a similar case”.

12. This position has been fortified by decisions of the superior court on several occasions. In the case of [John Nthumbi Kamwithi v Asha Akumu Juma](#) (2018) eKLR the court held that:-

“I find that the appellant had no obligation to seek permission from the Tribunal to levy distress. The fact that tenancy is controlled does not mean that the landlord applies to the tribunal to levy distress. Distress is a right the landlord is entitled to for recovery of rent”.

13. It is therefore apparent and also in our view, that the moment the Tenant fell into rent arrears, the landlord had the automatic legal license to effect levy of distress in recovery of such rents in arrears.



14. Looking at these proceedings in their totality, we are persuaded that each party should bear own costs. The landlord issued a defective notice to alter the terms of the tenancy without following the due process of the law. On her part, the Tenant has been in rent arrears since the year 2022 and pays the same in bits and pieces which pay is not beneficial to the landlord.
15. In the final analysis, the orders that commend to us are the following:-
- i. That the rent payable on the demised premises are determined at Kshs.7,000/- per month payable in advance.
 - ii. That the prayers for both rent increment and termination of the tenancy are declared unlawful and of no legal effect.
 - iii. The Tenant shall pay the rent in arrears at Kshs.67,000/- as at June 2024 within the next 30 days of the date of this Ruling hereof and in default, the landlord shall be at liberty to effect distress in recovery of the same.
 - iv. That each party shall bear own costs of this suit.
 - v. That this matter is marked as settled and the file is ordered closed.

Those are the orders of the court.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

Ruling delivered in the presence of the Tenant in person and in the absence of M/S Munene for the Landlord.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

4TH JUNE 2024.

