



**Francis Mwangi Kihara t/a (Director of Tims Company) v Muna (Tribunal  
Case E113 of 2020) [2023] KEBPRT 1219 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1219 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E113 OF 2020  
CN MUGAMBI, CHAIR  
JUNE 21, 2023**

**BETWEEN**

**FRANCIS MWANGI KIHARA T/A (DIRECTOR OF TIMS  
COMPANY) ..... LANDLORD**

**AND**

**JOHN BAPTIST MUNA ..... TENANT**

**RULING**

**Introduction**

1. The landlord's application dated 15.12.2022 seeks orders that the tenant be compelled to pay rent arrears amounting to Kshs. 120,000/= and electricity bill amounting to Kshs. 58,419/= , order compelling the tenant to move out of the premises, leave to levy distress and police assistance through the OCS, Bahati Police Station.

**The Landlord's Depositions**

2. The landlord/Applicant has filed an affidavit sworn on 15.12.2022 wherein he has deposed that the Respondent/Tenant is his tenant on the suit premises at an agreed rent of Kshs. 15,000/= and other than Kshs. 15,000/= paid in March 2022, the tenant has not paid rent from May 2022 till the date of swearing this affidavit.
3. The landlord further deposes in his affidavit that the tenant owes him rent and electricity bill unpaid in the sum of Kshs. 120,000/= and Kshs. 58,419/= respectively.
4. The Applicant/Landlord has also deposed that the tenant has failed to maintain hygienic structures as a result of which the Public Health Department has issued a statutory notice over the premises.
5. The landlord is not interested in the tenant any longer and demands that he vacates the premises.



6. The landlord has deponed in his further affidavit that the tenant is misleading the Tribunal when he alleges that he raised an objection over the rent.
7. The landlord further depones that the tenant's premises/suit business have been closed and have not operated for nearly a year.

### **The Tenant's Depositions**

8. The tenant has sworn a replying affidavit wherein he has deponed that he is the Applicant's tenant paying a monthly rent of Kshs. 10,000/= and that he paid the rent of Kshs. 60,000/= in advance during the first six months.
9. The tenant has deponed in his affidavit that he has not been served with any statutory notice for the increment of rent and therefore any increment is illegal.
10. The tenant further depones that the agreeable rent between him and the landlord is Kshs. 10,000/=.

### **ISSUES FOR DETERMINATION**

11. The issues that arise for determination in this application are, in my humble view, the following:-
  - a. What is the rent payable for the suit premises.
  - b. Whether the tenant is in rent arrears.
  - c. Whether the landlord is entitled to the prayers sought in his application.

#### **Issue A**

12. The tenant has stated/deponed in his affidavit that he entered into a tenancy agreement with the landlord in the year 2017 at an agreed monthly rent of Kshs. 10,000/= but which was later increased to Kshs. 12,000/= and Kshs. 15,000/= without following the laid down procedures for the increment of rent under Cap 301 of the Laws of Kenya. I have seen the rent card annexed to the tenant's replying affidavit and the same shows that on 1.10.2017 the tenant paid rent of Kshs. 60,000/= to represent six months rent and on 1.4.2018 and 1.5.2018 the tenant paid Kshs. 12,000/= for each of the months. The alleged increment of Kshs. 15,000/= does not find support in the rent card and I will disregard it.
13. On the payment of Kshs. 12,000/= per month for the months of April and May, 2018, I find that the tenant paid the same without any objection and he is therefore bound by his own conduct. He is in the circumstances deemed to have waived any right to object to the increment. I am prepared to find and do find that the rent payable for the suit premises is Kshs. 12,000/= per month.

#### **Issue B**

14. The rent card by the tenant shows that he paid rent in May 2018. The landlord's affidavit however has deponed that the tenant has not paid rent from May 2022 to the time of filing the replying affidavit on 15.12.2022. The tenant has not challenged this position as he has only contended himself with challenging the rent increment. Consequently, I do find that the tenant is in rent arrears from May 2022 to date.

#### **On Issue C**

15. The tenant having not demonstrated that he has paid the rent claimed by the landlord, I do find that the tenant owes the landlord the aforesaid rent arrears and any other rent accumulated to date. The



tenant has not challenged the electricity charges demanded by the landlord and it is only fair that the tenant is advised to clear the same.

16. I do note that the landlord has stated that the tenant has not been in occupation of the premises for almost one year and the premises is not operational. Even as that may be the case, I also note that the landlord has filed in this matter a notice to terminate tenancy on entirely different grounds that have not been determined yet. The Applicant's prayer No. 4 seeks an order compelling the tenant to move out of the suit premises. Effectively, this would amount to a termination of the tenancy without the benefit of the determination of the reference filed by the tenant against the landlord's notice to terminate tenancy. This would be in clear violation of Section 6(1) of [Cap 301](#) which provides as follows:-

“A receiving party who wishes to oppose a tenancy notice and who has notified the requesting party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice, may before the date upon which such notice is to take effect refer the matter to a tribunal. Whereupon that notice shall be of no effect until and subject to the determination of the reference by the tribunal.”

17. In view of the above findings, I allow the landlord's application in form of prayer 2 and 3 thereof and further grant leave to the landlord to levy distress for rent for the outstanding rent arrears up to and including the date of seeking levy of distress. The landlord shall have the costs of the application.

**RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF JUNE 2023**

**HON. CYPRIAN MUGAMBI**

**CHAIR PERSON**

6.2023

In the presence of:-

Mr. Nyaseda for the tenant/Respondent

Mr. Kinyanjui for the landlord/Applicant

