



**Chokera v Thube (Tribunal Case E1096 of 2023)  
[2024] KEBPRT 1191 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1191 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1096 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
JULY 31, 2024**

**BETWEEN**

**GABRIEL CHOKERA ..... TENANT**

**AND**

**NJERI THUBE ..... LANDLORD**

**JUDGMENT**

1. The tenant moved this Tribunal by way of a Complaint dated 6<sup>th</sup> November 2023 under Section 12(4) of Cap. 301, Laws of Kenya claiming that the landlord illegally attached and seized goods worth Kshs 3,000,000/= on 4<sup>th</sup> November 2023 without a proclamation notice and further threatened to attach more goods on 5<sup>th</sup> November 2023 claiming non-existent rent.
2. The tenant simultaneously filed a motion of even date supported by his sworn affidavit seeking for interim orders of injunction to restrain the landlord from terminating, evicting, demolishing, carrying goods or in any way interfering with his tenancy or peaceful occupation of offices situate on 1<sup>st</sup> floor of land reference No. Dagoretti/ Riruta/5313, Nairobi.
3. He also sought that the landlord be ordered to unconditionally release the goods illegally attached and seized from his premises in the state they were before the illegal and unlawful attachment.
4. He also sought for payment of damages amounting to Kshs 5,000,000/= incurred by him from loss of income, damaged goods and mesne profits from the date of illegal attachment until release of the said goods.
5. In his affidavit in support of the application, the tenant deposes that he entered into a tenancy agreement with the landlord in the month of September 2022 for a period of 5 years. The agreement is attached to the affidavit as annexure "A".



6. The suit premises were to be used for assembling, buying and selling all kinds of furniture and fixtures. The premises were to act as stores and warehouse of furniture, fittings, glass, leather, home furnishings and all types of wooden products.
7. The deposes that he paid the agreed rent deposit and has been paying monthly rent without falling into any arrears. He had by 6<sup>th</sup> November 2023 paid Kshs 3,210,000/= being Kshs 900,000/= six months deposit and 13 months rent payment of Kshs 1,950,000/= and had an overpayment of Kshs 360,000/=. The statement of account and bank statements are attached to his affidavit as annexure “B”.
8. In August 2023, the landlord sent goons to the suit premises to destroy goods placed on the front part of the tenant’s shop and took up the space for leasing out to a new tenant. The two parties’ latter negotiated a settlement and the landlord agreed to surrender back the space to the tenant at the end of November 2023.
9. However, on 4<sup>th</sup> November 2023, the landlord sent goons to attach the tenant’s goods over non-existent rent arrears chasing away his customers and his attempts to stop the attachment was unsuccessful. Goods worth Kshs 3,000,000/= were carted away from the suit premises as per the inventory marked annexure “C”.
10. The tenant further attaches as annexure “D” payment receipts for customers who had ordered goods from his shop which were ready for collection but were affected by the seizure. No inventory of the attached goods was left behind by the landlord after the said seizure.
11. Interim orders were granted ex-parte on 8<sup>th</sup> November 2023 pending hearing inter-partes on 6<sup>th</sup> November 2023. This Tribunal inter-alia ordered that the attached goods were not to be sold or disposed of.
12. The landlord filed an affidavit sworn on 1<sup>st</sup> December 2023 in which she admits leasing out the suit premises situate on L.R No. Dagoretti/ Riruta/5311 for a period of 5 years through a tenancy agreement dated 7<sup>th</sup> September 2022 at a monthly rent of Kshs 150,000/= attached to the tenant’s affidavit as annexure “A”.
13. She further deposes that the tenant entered into another agreement tenancy agreement dated 16<sup>th</sup> December 2022 for another premises on L.R NO. Dagoretti/ Riruta/5312 vide a tenancy agreement marked “HNT 1”. He only paid Kshs 40,000/= for the two premises and never paid any other money until August 2023 when the landlord took possession. According to the landlord, the tenant owed her Kshs 520,000/= in respect of the premises.
14. From September 2022 to November 2022, the tenant was paying Kshs 150,000/= per month. He was supposed to pay a total sum of Kshs 220,000/= per month from December 2022 to August 2023 and from September 2023, a sum of Kshs 200,000/=.
15. According to the landlord, the tenant was supposed to have paid Kshs 2,400,000/= in respect of the first agreement and Kshs 560,000/= making a total of Kshs 2,960,000/= as at November 2023 but had paid Kshs 1,110,000/= leaving a balance of Kshs 1,850,000/= owing to the landlord exclusive of the rent deposit of Kshs 900,000/= paid by him.
16. The landlord denies alleged total payments of Kshs 600,000/= made through her Equity Bank account and of Kshs 510,000/= through her Family Bank account by the tenant to make altogether Kshs 1,110,000/=. She attaches her bank statements as annexure “HNT 2”.
17. She further accuses the tenant of subletting part of the second premises but failed to pay rent. The subtenant approached the landlord and confirmed being the one in occupation thereof. The landlord



- took back the premises on L.R NO. Dagoretti/ Riruta/5312 and rent it out afresh as per annexure marked “HNT 3” to one Eliud Murerwa Muthana on 1<sup>st</sup> September 2023.
18. In an affidavit headed “Replying Affidavit” sworn on 15<sup>th</sup> December 2023, the tenant responded to the issues raised in the landlord’s replying affidavit denying having executed the second tenancy agreement marked as annexure “HNT 1” and accuses her of forgery. The tenant denies that the landlord took back possession of the suit premises and accuses her of disconnecting water supply. He deposes that the impugned tenancy agreement relates to a different premises.
  19. The tenant reiterates that he had paid Kshs 3,200,000/= as at 6<sup>th</sup> November 2023 by attaching certified copies of Mpesa and bank statements as annexure “C” and gives an analysis of all the payments made to the landlord at paragraph 15 thereof. He reiterates having made an overpayment of Kshs 360,000/=.
  20. A further replying affidavit sworn by the landlord on 19<sup>th</sup> February 2024 was on 1<sup>st</sup> March 2024 expunged from the court record on account of having been filed without leave.
  21. On the said date, this Tribunal gave directions to the effect that the matter proceeds to hearing by way of viva voce evidence. Both parties were required to comply with Order 11 of the Civil Procedure Rules.
  22. Pursuant to the said directions, the tenant filed a witness statement dated 20<sup>th</sup> March 2024 together with a list and bundle of documents of even date. The landlord did not comply with the said directions.
  23. When the matter came up for viva voce hearing on 5<sup>th</sup> June 2024, the landlord and her Counsel did not appear despite having been served with a hearing notice as per the affidavit of service sworn on 23<sup>rd</sup> May 2024 by one Dickson Kimeu Mueke.
  24. The following issues arise for determination in this case;
    - a. Whether the reliefs sought in the tenant’s Complaint and application dated 6<sup>th</sup> November 2023 ought to be granted or denied.
    - b. Who is liable to pay costs?
  25. The tenant moved this Tribunal by way of a Complaint dated 6<sup>th</sup> November 2023 under Section 12(4) of Cap. 301, Laws of Kenya claiming that the landlord illegally attached and seized his goods worth Kshs 3,000,000/= on 4<sup>th</sup> November 2023 without a proclamation notice and further threatened to attach more goods on 5<sup>th</sup> November 2023 while claiming non-existent rent.
  26. The tenant simultaneously filed a motion of even date supported by his sworn affidavit seeking for interim orders of injunction to restrain the landlord from terminating, evicting, demolishing, carrying goods or in any way interfering with his tenancy or peaceful occupation of offices situate on 1<sup>st</sup> floor of Land Reference No. Dagorreti/Riruta/5313, Nairobi.
  27. He also sought that the landlord be ordered to unconditionally release the goods illegally attached and seized from his premises in the state they were before the illegal and unlawful attachment.
  28. He also sought for payment of damages amounting to Kshs 5,000,000/= incurred by him from loss of income, damaged goods and mesne profits from the date of illegal attachment until release of the said goods.
  29. In his affidavit in support of the application, the tenant deposes that he entered into a tenancy agreement with the landlord in the month of September 2022 for a period of 5 years. The agreement is attached to his affidavit as annexure “A”.



30. The suit premises were to be used for assembling, buying and selling all kinds of furniture and fixtures. The premises were to act as stores and warehouse of furniture, fittings, glass, leather, home furnishings and all types of wooden products.
31. The tenant deposes that he paid the agreed rent deposit and has been paying monthly rent without falling into any arrears. He had by 6<sup>th</sup> November 2023 paid Kshs 3,210,000/= being Kshs 900,000/= six months' deposit and 13 months' rent payment of Kshs 1,950,000/= and had an overpayment of Kshs 360,000/=. The statement of account and bank statements are attached to his affidavit as annexure "B".
32. In August 2023, the landlord sent goons to the suit premises to destroy goods placed on the front part of the tenant's shop and took up the space for leasing out to a new tenant. The two parties' latter negotiated a settlement and the landlord agreed to surrender back the space to the tenant at the end of November 2023.
33. However, on 4<sup>th</sup> November 2023, the landlord sent goons to attach the tenant's goods over non-existent rent arrears chasing away customers and his attempts to stop the attachment was unsuccessful. Goods worth Kshs 3,000,000/= were carted away from the suit premises as per the inventory marked annexure "C".
34. The tenant further attaches as annexure "D" payment receipts for customers who had ordered goods from his shop which were ready for collection but were affected by the seizure. No inventory of the attached goods was left behind by the landlord after the said seizure.
35. Interim orders were granted ex-parte on 8<sup>th</sup> November 2023 pending hearing inter-partes on 6<sup>th</sup> November 2023. This Tribunal inter-alia ordered that the attached goods were not to be sold or disposed of.
36. The landlord filed an affidavit sworn on 1<sup>st</sup> December 2023 in which she admits leasing out the suit premises situate on L.R No. Dagoretti/ Riruta/5311 for a period of 5 years through a tenancy agreement dated 7<sup>th</sup> September 2022 at a monthly rent of Kshs 150,000/= attached to the tenant's affidavit as annexure "A".
37. She further deposes that the tenant entered into another agreement tenancy agreement dated 16<sup>th</sup> December 2022 for another premises on L.R NO. Dagoretti/ Riruta/5312 vide a tenancy agreement marked "HNT 1". He only paid Kshs 40,000/= for the two premises and never paid any other money until August 2023 when the landlord took possession. According to the landlord, the tenant owed her Kshs 520,000/= in respect of the premises.
38. From September 2022 to November 2022, the tenant was paying Kshs 150,000/= per month. He was supposed to pay a total sum of Kshs 220,000/= per month from December 2022 to August 2023 and from September 2023, a sum of Kshs 200,000/=.
39. According to the landlord, the tenant was supposed to have paid Kshs 2,400,000/= in respect of the first agreement and Kshs 560,000/= making a total of Kshs 2,960,000/= as at November 2023 but had paid Kshs 1,110,000/= leaving a balance of Kshs 1,850,000/= owing to the landlord exclusive of the rent deposit of Kshs 900,000/= paid by him.
40. The landlord denies the alleged total payments of Kshs 600,000/= made through her Equity Bank account and of Kshs 510,000/= through her Family Bank account by the tenant to make altogether Kshs 1,110,000/=. She attaches her bank statements as annexure "HNT 2".
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- took back the premises on L.R NO. Dagoretti/ Riruta/5312 and leased it out afresh as per annexure marked “HNT 3” to one Eliud Murerwa Muthama on 1<sup>st</sup> September 2023.
42. In an affidavit headed “Replying Affidavit” sworn on 15<sup>th</sup> December 2023, the tenant responded to the issues raised in the landlord’s replying affidavit denying having executed the second tenancy agreement marked as annexure “HNT 1” and accused her of forgery. The tenant denied that the landlord took back possession of the suit premises and accused her of disconnecting water supply. He deposed that the impugned tenancy agreement relates to a different premises.
  43. The tenant reiterated that he had paid Kshs 3,200,000/= as at 6<sup>th</sup> November 2023 by attaching certified copies of Mpesa and bank statements as annexure “C” and gave an analysis of all the payments made to the landlord at paragraph 15 thereof. He reiterated having made an overpayment of Kshs 360,000/=.
  44. A further replying affidavit sworn by the landlord on 19<sup>th</sup> February 2024 was on 1<sup>st</sup> March 2024 expunged from the court record on account of having been filed without leave.
  45. On the said date, this Tribunal gave directions to the effect that the matter proceeds to hearing by way of viva voce evidence. Both parties were required to comply with Order 11 of the Civil Procedure Rules.
  46. Pursuant to the said directions, the tenant filed a witness statement dated 20<sup>th</sup> March 2024 together with a list and bundle of documents of even date. The landlord did not comply with the said directions.
  47. When the matter came up for viva voce hearing on 5<sup>th</sup> June 2024, the landlord and her Counsel did not appear despite having been served with a hearing notice as per the affidavit of service sworn on 23<sup>rd</sup> May 2024 by one Dickson Kimeu Mueke.
  48. The tenant however appeared and testified virtually and closed his case after adopting his witness statement and list of documents earlier filed herein.
  49. We have considered the materials placed on record and noted that the second tenancy agreement dated 16<sup>th</sup> December 2022 relates to another premises situate on L.R NO. Dagoretti/ Riruta/5312 whereas the suit premises herein is situated on L.R NO. Dagoretti/ Riruta/5313. The two premises have separate tenancy agreements with different terms and cannot be lumped up together as one contract.
  50. We have seen the certified filtered Mpesa and bank statements relied upon by the tenant and we are satisfied that the payments reflected thereon were indeed made to the landlord. It is therefore clear to us that as at the date of seizure of the tenant’s properties on 4<sup>th</sup> October 2023, he had no rent arrears owing to the landlord.
  51. Consequently, the landlord’s actions of entering into the suit premises with goons and seizing the tenant’s properties aforesaid was illegal and against the tenets of the *Distress for Rent Act*, Cap 293 and the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya. The landlord is therefore liable for the losses incurred by the tenant.
  52. The landlord did not dispute the fact that she illegally carted away properties worth Kshs 3,000,000/= belonging to the tenant as claimed in the Complaint and application under consideration. The inventory of the said goods which was produced as the tenant’s exhibit 6 shows that properties worth Kshs 3,025,000/= were carted away by the landlord. We have no evidence to controvert the said claim but we shall however only award what is pleaded in the Complaint and application.
  53. As regards the tenant’s claim for damages amounting to Kshs 5,000,000/= on account of alleged loss of income, damaged goods and mesne profits from the date of the illegal attachment, we find no evidence on record to support the same. We shall therefore decline the claim.



54. In regard to the tenant's prayer for injunction, we have already found that the landlord's seizure of his property was illegal. The landlord did not issue any proclamation nor inventory of the seized properties contrary to all known laws and practice. He did not even engage the services of a Licensed Auctioneer but instead used goons to carry out her nefarious acts.
55. Consequently, an injunction order ought to issue against her in line with the decision of the Court of appeal in the case of *Aikman & Others v Muchoki & others* (1982) eKLR wherein it was held as follows;
- “The conditions spelled out above for the grant of an interlocutory injunction were rightly understood but wrongly applied as follows: first, the appellants being lawfully in possession of the estates under the authority of the debentures executed by Mbo and Loresho, and the defendants having unlawfully seized and continuing in possession of the estates, the appellants had shown a clear and overwhelming prima facie probability of success; the court ought never to condone and allow to continue a flouting of the law. Those who flout the law by infringing the rightful title of others, and brazenly admit it, ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory injunction, be it so. Equity will not assist law-breakers.” (emphasis added)
56. The said decision was followed by Maraga J (as he then was) in the case of *Joseph Mbugua Gichanga v Cooperative Bank of Kenya Limited* (2005) eKLR as follows;
- “My understanding of the Court of Appeal decision in the Giella case is that the court proceeds to consider the second condition of irreparable harm which cannot be adequately compensated for by an award of damages only if it entertains some doubt on the first condition of the probability of success, like when the court thinks that the plaintiff has a fifty/fifty chance of success. However, where, going by the material placed before it at an inter-parte hearing of an application for injunction, it appears to the court that the plaintiff has a strong case, like where it is clear that the defendant's act complained of is or may very well be unlawful, the issue of whether or not damages can be an adequate remedy for the plaintiff does not fall for consideration. A party should not be allowed to maintain an advantageous position he has gained by flouting the law simply because he is able to pay for it. Support for this view is to be found in the Court of Appeal decision in the case of *Aikman Vs Muchoki* [1984] KLR 353.” (emphasis added).
57. As regards costs, the same are always in the Tribunal's discretion under Section 12(1)(k) of *Cap. 301*, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the tenant. The said costs shall be exemplary in nature to dissuade other landlords from conducting similar attachments against controlled tenants.
58. In conclusion, the following final orders commend to us under Section 12(4) of *Cap 301*, Laws of Kenya;
- An order of injunction is hereby issued, restraining the landlord from terminating, evicting, demolishing, attaching goods or in any other manner interfering with the tenant's tenancy over the premises situate on L.R NO. Dagoretti/ Riruta/5313 without following the procedure laid down in Cap. 301, Laws of Kenya.
  - The landlord shall pay to the tenant a sum of Kshs 3,000,000/= being the value of the goods/ properties seized from the suit premises situate on L.R NO. Dagoretti/ Riruta/5313.
  - The landlord shall pay exemplary costs of Kshs 100,000/= to the tenant in this case.



It is so ordered.

**JUDGEMENT DATED, SIGNED AND VIRTUALLY DELIVERED THIS 31<sup>st</sup> DAY OF JULY 2024.**

**HON GAKUHI CHEGE - PANEL CHAIRPERSON**

**HON JOYCE A OSODO- PANEL MEMBER**

IN THE PRESENCE OF;

Miss Kioko for tenant

No appearance for the landlord

