



**Kamau v Mburu & another (Tribunal Case 61 of 2019)
[2023] KEBPRT 1287 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1287 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 61 OF 2019
CN MUGAMBI, CHAIR
JUNE 21, 2023**

BETWEEN

ANN KAMAU TENANT

AND

JOSEPH KINYANJUI MBURU 1ST LANDLORD

KIOI NJUGUNA 2ND LANDLORD

RULING

Introduction

1. The landlord's application dated 16.10.2019 seeks an order that the Tribunal be pleased to find that it does not have the jurisdiction to entertain this matter, amongst other prayers. I propose to deal with the issue of jurisdiction at this point as the decision thereof will determine whether the Tribunal can take any further steps in this matter.

The landlord's depositions

2. The affidavit sworn by the 2nd Applicant in respect of the application may be summarized as follows:-
 - a. That the tenant defaulted in paying rent for the month of August 2018 to June 2019 as a result of which the 1st Applicant instructed auctioneers to levy distress for rent arrears of Kshs. 110,000/=.
 - b. That upon attachment of the tenant's goods, the tenant vacated the premises which was thereafter given out to another tenant.
 - c. That the tenant's goods were advertised in the Star Newspaper of 3rd and 4th August 2019 and disposed of in accordance with the law.



- d. That in the circumstances, the tribunal lacks jurisdiction to entertain this matter.
- e. That the tenant was in arrears of rent for months before the distress for rent was issued and any payments she made only covered for the arrears.

The Tenant's depositions

- 3. The tenant's affidavit sworn on 30.10.2020 may be summarized as follows:-
 - a. That between August 2018 and June 2019, the tenant paid rent of Kshs. 117,200/= exceeding the rent payable of Kshs. 110,000/= . All rent due up to June 2019 has therefore been paid in full.
 - b. That at the time the suit premises was allegedly rented out, the tenant had already paid rent for the month of July 2019.
 - c. That the notice of intention to terminate tenancy was even issued to the tenant and it is therefore clear that the landlords were intentionally bent on driving the tenant out of the premises with the intention of renting the same out to another tenant.
 - d. That the termination of the tenancy was unlawful and the tenant incurred a loss of Kshs. 1,085,060/= as a result of the illegal termination of tenancy.
 - e. That the tenant had paid a deposit of Kshs. 20,000/= which the landlords have never refunded.

Jurisdiction

- 4. It is common ground that the tenant is no longer in the suit premises and cannot strictly be said to be the tenant of the landlord. The landlord's position is that the tenant vacated the suit premises immediately after the auctioneers levied distress for rent while the tenant states that she was thrown out of the suit premises.
- 5. I have perused the document annexed to the affidavit of the 2nd Applicant and I note that;-
 - a. On 20.6.2019 the landlord instructed M/S Kiriyyu Merchants to levy distress for rent against the tenant for the sum of Kshs. 110,000/=.
 - b. The tenant's goods were proclaimed on 24.6.2019.
 - c. A notification of sale of moveable property was issued to the tenant dated 25.7.2019.
 - d. The tenant's goods were duly advertised in the Star Newspaper.
- 6. I am not able to tell from the material placed before me whether the tenant left voluntarily as suggested by the landlord's or whether she was thrown out as suggested by herself.
- 7. On the question of the rent balances, the tenant has stated that she had overpaid the rent for the months of August 2018 to June 2019 but the position taken by the landlord is that the tenant had been in rent arrears much earlier than August 2018 and any payment made was to cover the earlier arrears. In view of these two rival and contradicting positions taken by the parties, and in the absence of a rent book or proper statement of accounts, I am not able to state whether the distress for rent was justified or not and what amount was due if any.
- 8. The only certain fact in this case is the fact that the tenant is no longer a tenant in the suit premises. as such there does not exist any tenant/landlord relationship between the parties and consequently, the



Tribunal lacks the jurisdiction to take any further steps in this matter. To this extent, I do agree with the submissions of the landlord/Applicant.

I also agree with the views of the tenant's counsel that the tenant ought to pursue her claim before a court of competent jurisdiction.

9. Having arrived at the above conclusion, I have no choice but to down my tools, the reference and the application herein are dismissed for want of jurisdiction. Each party will bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JUNE 2023.

HON. CYPRIAN MUGAMBI -CHAIRPERSON

21. 6.2023

