



**Smart Source Printers Limited v Asifu & another (Tribunal Case E732 of 2024)
[2024] KEBPRT 1444 (KLR) (Civ) (12 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1444 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E732 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
SEPTEMBER 12, 2024**

BETWEEN

SMART SOURCE PRINTERS LIMITED RESPONDENT

AND

MOHAMED JUMA ASIFU 1ST APPLICANT

MOHAMED RAUF 2ND APPLICANT

RULING

1. This Ruling is on the Tenant/applicants Notice of Motion application dated 9th July 2024 and also on the Landlords Notice of Motion dated the 15th July 2024. The Tenant's motion is anchored on Section 12 (4) of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act (Cap. 301) hereinafter referred to as "the Act". The motion for the Landlord on the other hand is said to be founded on order 40 Rule (1) of the Civil Procedure Rules and Section 3A of the Act thereof.
2. The Tenant's application sought that the landlord be compelled to re-open her business premises which he had locked down and to be restrained from interfering with her quiet possession thereof. The orders were to be enforced by the OCS Industrial Area Police Station.
3. The Landlords aforesaid application on the other hand was seeking to stay enforcement of the orders that this court had issued on the 10th July 2024 pursuant to the Tenant's motion thereof. He also sought to have the Tenant be ordered to pay all the rents in arrears within 30 days and in default, permission be granted to levy distress in recovery of the rents in arrears.
4. The Landlord after the close of the proceedings filed the notice of motion application dated the 28/8/2024. In the motion he sought to be granted leave to file a supplementary affidavit, with the



Affidavit, he was to demonstrate that all the cheques issued in purported payment of rent by the Tenant, had all been returned unpaid.

5. Having perused the parties pleadings, documents and the submissions on the part of the Landlord, it is our view that the issues for determination in this matter are the following:-
 - A. Whether the Tenants application dated 9th July 2024 has merit.
 - B. Whether the landlord's application dated 15th July 2024 is merited.
 - C. Who should bear the costs of the suit.
6. Before getting into the determination of the issues at hand, it is important to appreciate that a determination on the Tenant's application dated 9th July 2024 shall also resolve the reference of the even date. It is also important to confirm that this court determined to allow the landlord's application dated 28th August 2024 and allowed the supplementary affidavit sworn on the 28th August 2024 for the larger interest of Justice.
7. Going back to the first issue of whether the Tenant application dated 9th July 2024 is merited, we first note that the Tenant came to court claiming that the landlord had wrongly locked down her business premises when she had no rents in arrears. She attached cheque leaf to confirm the rent payments.
8. This was however rebutted in the landlords application dated the 15th July 2024 and the supplementary affidavit sworn on the 28th August 2024. By the annexure marked "MJ-1" it was demonstrated that at least 6 six (6) cheque leaves issued towards settlement of the rent arrears were returned unpaid. The same are for the total amount of Kshs.322,515.
9. There is no evidence that the unpaid cheques were replaced or the amounts thereof settled. There is no sufficient nor satisfactory materials to impeach the contention that at the time the Tenant moved to court, she had arrears of Kshs.538,875/-. When the rents for the months of September are factored in, it would confirm that as at the date of this Ruling, the Tenant owes rents in arrears at Kshs.538,875/- inclusive the month of September 2024 taking cognizance of the inference of the law that rent is payable in advance.
10. The Tenant in this matter is seeking for equitable reliefs of injunction. It is trite law that those who come to equity must do so with clean hands, we doubt that the Tenant has satisfied that principle when in huge rent arrears of Kshs.538,875. We would therefore vacate the orders made on the 10th July 2024 and dismiss the application. In this we find reliance in the leading case of Samuel Kipkorir Ngeno & Another v Local Authorities Pension Trust (Registered trustees) & Another [2013] e KLR where the court had this to say in similar circumstances:-

“The Temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A Tenant who is in huge arrears of rent is underserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due. In the circumstances I must refuse the notice of motion dated 19th April 2024. It is dismissed with costs to the defendant. The interim injunction granted on 23rd April 2024 is hereby vacated”.

11. On the 2nd issue of whether the landlord's application dated 15th July 2024 has merit, it is obvious that with the Tenant running such huge arrears in rent, the landlord had a reason to be aggrieved by the orders of this court issued on the 10th July 2024 in favour of the Tenant.



12. It is obvious that the said orders had been issued for reason of material non-disclosure and the erroneous presentation by the tenant that she was not in any rent arrears when the opposite was the correct position. We therefore find for the landlord that those orders needed to be stayed and/or vacated all the same.
13. It is also our view that the Landlord request to have the Tenant ordered to settle the rent arrears in 30 days and in default levy of distress to issue quite reasonable and we would also uphold the same. The essence of this is that the landlord's application dated 15th July 2024 is allowed in the terms as prayed.
14. It is unimpeachable that there is huge rents in arrears and the landlord has therefore the inherent right without the permission of this court or any other authority to proceed with levy of distress to recover such 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 arrear and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case”.

15. To pursue such distress, the landlord may not need the authority of this court or from any other source. The Embu High Court in the case of John Nthumbi Kamwithi v Asha Akumu Juma [2018] e KLR the court had this to say:-

“I find that the appellant had no obligation to seek permission from the Tribunal to levy distress. The fact that the 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”.

16. On who should bear the costs of the reference and the application, it would have been obvious that same should be awarded to the landlord. That is also what Section 27 of the [Civil Procedure Act](#) and the proviso thereto speaks to. However, in this matter, the landlord though aggrieved decided to take the law into his hands and locked down the Tenant's premises. That was in clear breach of the Act. We therefore would direct that each party bears own costs.
17. In the final analysis, the orders that commend to us are the following:-
 - i. That the reference and Application both dated 9th July 2024 are dismissed.
 - ii. The application dated 15th July 2024 by the Landlord is allowed in terms that the Tenant shall settle all the rents in arrears upto and including the month of September, 2024 at Kshs.538,875 within 30 days of the dated of this Ruling and in default the landlord is at liberty to levy distress in recovery thereof at the tenant's costs.
 - iii. That each party to bear own costs of these proceedings.Those are the orders of this court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF SEPTEMBER 2024.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL



Ruling delivered in the presence of Mr. Manani Counsel for the Landlord and in the absence of the Tenant though aware of the date.

HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

