



**Kabiaro v Ngove & another (Tribunal Case E671 of 2024)
[2024] KEBPRT 1513 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1513 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E671 OF 2024
CN MUGAMBI, CHAIR
OCTOBER 11, 2024**

BETWEEN

ELKANAH KARIUKI KABIARO APPLICANT

AND

EDWARD KALA NGOVE LANDLORD

AND

MUGANDA WASULWA T/A KESHIAN AUCTIONEERS RESPONDENT

RULING

Introduction

1. The Tenant's Application dated 19.7.2024 seeks orders to the effect;
 - a. That the Respondent be directed to Fullyre-open out the premises erected on LR No. 209/6377 Nairobi(hereinafter referred to as the "suit premises").
 - b. That the Respondent be ordered to immediately return the tools of trade belonging to the Applicant.
 - c. That the 1st Respondent be restrained from disposing of, selling by public auction or in any other manner transferring the tools of trade in their custody.
 - d. That the Landlord be restrained from interfering with the Tenant's enjoyment of the suit premises and be further ordered to return the Tenant's goods.

The Tenant's depositions

2. The affidavit of the Tenant in support of the Application may be summarized as follows:-



- a. That as per the lease agreement entered into between the parties, the Tenant pays to the Landlord a monthly rent of Kshs. 100,000/=, which rent the Tenant has been faithfully paying and any delays in the payment of the said rent have been explained to the Landlord.
- b. That the 2nd Respondent served the Tenant with a proclamation and sale of goods notice dated 12.6.2024 informing the Tenant that he had attached the goods/items listed at paragraph 5 of the supporting affidavit.
- c. That the 2nd Respondent did not serve the Tenant with the requisite notices as spelt out in law before distress for rent is effected, thus denying the Tenant the right of response.
- d. That on 18.6.2024, the Tenant was informed and did actually confirm that his goods had been advertised for sale in the Standard Newspapers.
- e. That the Tenant only admits to owing the Landlord rent arrears amounting to Kshs. 350,000/= and not Kshs. 500,000/= as shown on the notice of attachment and sale.
- f. That it is important to ascertain the correct rent arrears.
- g. That the Respondents actions are illegal as they have never formally demanded for rent from the Tenant nor supplied statements of accounts in relation to the outstanding rent arrears before proclaiming.

The Landlord's depositions

3. The Landlord's replying affidavit sworn on 23.8.2024 may be summarized as follows;-
 - a. That the Landlord derives his livelihood from the suit property.
 - b. That the Tenant has been paying rent sporadically and he owes colossal amounts in rent arrears.
 - c. That every time the Landlord follows up on rent, the Tenant comes up with lies and empty promises and has now accumulated rent arrears amounting to Kshs. 1,323,439.30/=.
 - d. That the Tenant's assertion that his business premises were locked without notice is untrue, frivolous and vexatious.
 - e. That the Tenant's tools of trade were seized by the Auctioneers pursuant to a court order in Milimani CMCC Misc Application No. E162 of 2024.
 - f. That the Tenant/Applicant has not come to court with clean hands as he has failed to prove any rent payments.

Analysis and determination

4. The issues that arise for determination in this Application are in my view the following;-
 - a. Whether the Tenant is in rent arrears
 - b. Whether the Tenant is entitled to the orders sought in his Application.
 - c. Whether the Landlord is entitled to levy distress for rent.

Issue A: Whether the Tenant is in rent arrears

5. The Tenant in his affidavit in support of the Application at paragraph 8 admits to owing the Landlord Kshs. 350,000/= in rent arrears as opposed to the figure of Kshs. 500,000/= shown in the notice of



attachment and sale. The Landlord on his part has claimed that the Tenant is in rent arrears amounting to Kshs. 1,323,439.30/= presumably as at 23.8.2024 when the Landlord's affidavit was sworn. It is important to note that the Tenant's affidavit admitting rent arrears of Kshs. 350,000/= was sworn on 19.7.2024, a month before the response by the Tenant.

6. None of the parties has filed in court what would amount to a proper statement of account as far as the suit premises is concerned. I am however satisfied on the Tenant's own admission that he owes rent for the admitted sum of Kshs. 350,000/=. Is the Tenant in these circumstances entitled to the orders of injunction he has sought against the Landlord?

In the case of; Samuel Kipkorir Ng'eno & Another vs Local Authorities Pension Trust (Registered Trustees) & Another [2013] eKLR, the court held;-

"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 undeserving of the court's discretion. The court cannot be a refuge of a tenant who fails to meet his principle obligation of paying rent as and when it falls due."

I do not think that in the circumstances of this case, the tenant is deserving of the equitable relief of injunction against the Landlord and I so hold.

7. The Tenant has also sought an order that his tools of trade be returned to him immediately. The Tenant supports this prayer with the deposition at paragraph 6 of his supporting affidavit where he has deposed as follows:-

"That the 2nd Respondent did not serve me the requisite notices as spelt out in law before distress for rent is effected thus the Respondents jointly and severally denied me the right of response which is contrary to Article 58(1) of the Constitution 2010 that stipulates the right to fair hearing."

8. With respect, the Tenant has not disclosed what he terms as the requisite notices that ought to have been served before the distress for rent could be effected. The right of a Landlord to distress for rent is provided for under Section 3(1) of Cap 293, the distress for rent Act where it provides as follows:-

"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."

The Tenant in this case has admitted to being in rent arrears. The sum of Kshs. 350,000/= that the Tenant admits to owing represents more than two months rent. The right of the Landlord to distress for rent has in the circumstances crystallized. I am not satisfied on the material placed before the Tribunal that the Landlord acted in any illegal manner when he levied distress for rent that was clearly due and owing.

9. In conclusion, and following from the foregoing findings, I do not find any merits in the Tenant's Application dated 19.7.2024 and the same is hereby dismissed with costs to the Landlord.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF OCTOBER 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



Delivered in the presence of Ms. Aswagi for the Landlord and in the absence of the Tenant and Counsel

