



**Watiti v Watiti (Tribunal Case E039 of 2024) [2024] KEBPRT 796 (KLR) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 796 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E039 OF 2024**  
**N WAHOME, CHAIR & JOYCE MURIGI, MEMBER**  
**JUNE 3, 2024**

**BETWEEN**

**BEATRICE WATITI ..... TENANT**

**AND**

**MARY WAFULA ..... LANDLORD**

**RULING**

1. The Landlord originated these proceedings by the Reference dated 27<sup>th</sup> February 2024. The same was said to be founded on Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap 301) hereinafter “the Act”. The Tenant in her own words complained that:-  
  
“The landlady has been harassing, intimidating me with threats of eviction by locking my business premises with all my goods without an order from the Rent Tribunal Court or any other court of law Contrary to Cap. 301 laws of Kenya. I request the Rent Tribunal court and OCPD Bungoma Police Station to order the landlady to stop harassing me with threats of eviction and reinstate me back to the Business Premises”.
2. Together with the reference was a notice of motion of the even date. It principally sought that the landlady be restrained from locking the Tenant’s business, evicting her, be ordered to re-open the business premises and that any orders issued, be enforced by the OCS Bungoma Police Station.
3. The Tenant asserted that the landlady had locked the demised premises on the 5<sup>th</sup> February 2024 and that she had also refused to accept rent. She claimed to owe only Kshs.10,500/- in rent arrears and that the monthly rent was Kshs.3,500/-.
4. In response, the landlady filed the notice of motion application dated 1<sup>st</sup> March 2024. She prayed that the interim orders granted to the Tenant on the 27<sup>th</sup> February 2024 be varied or set aside, the Tenant be restricted from accessing the demised premises, she be compelled to pay the rent arrears at



- Kshs.630,000/- as at February, 2024 that she be allowed to levy distress and that the business premises be “preserved” pending hearing of the application inter-partes.
5. It is the case for the Landlord that the rent payable on the demised premises is Kshs.35,000/- per month and not Kshs.3,500/- as alleged by the Tenant (Annexure “MW1” is the tenancy agreement dated 1<sup>st</sup> March 2016). After the initial tenancy agreement lapsed, the Tenant has refused/declined to execute a renewal of the Tenancy agreement (Annexure “MW2” dated 26<sup>th</sup> January 2023).
  6. That demands have been made to the Tenant to pay the rents in arrears (Annexure “MW3” dated 8<sup>th</sup> February 2024) but all has been in vain. That the Tenant was in arrears of Kshs.630,000/- as at February, 2024 (annexure “MW4” copy of Bank statements).
  7. The Tenant also filed the Replying Affidavit dated 3<sup>rd</sup> April 2024 to the landlady’s application dated the 1<sup>st</sup> March 2024. In it she asserted that:-
    - i. The non payment of rent was due to verbal and local arrangements with the landlady.
    - ii. She had no intention to vacate the premises and should be allowed a payment scheme to liquidate the rents in arrears.
    - iii. Reiterated that she had lost business and goodwill during the closure of the business between the 5<sup>th</sup> February 2024 and 27<sup>th</sup> February 2024.
    - iv. She paid her rents on time and as the same fell due and was not in rent arrears.
    - v. The intimidation and threats of eviction were not in line with the law.
  8. On her part the landlady filed what she titled as “further Affidavit” application dated 1<sup>st</sup> March 2024 and in response to the Tenant’s Replying Affidavit sworn on the 3<sup>rd</sup> April 2024. In it, she testified that:-
    - i. Her application dated 1<sup>st</sup> March 2024 was the response to the Tenant’s application dated 27<sup>th</sup> February 2024.
    - ii. The Tenant was a serial liar as the rent payable on the demised premises was Kshs.35,000/- and not Kshs.3,500/- (annexure ‘MW1’). The rent arrears was also Kshs.700,000/- as at May 2024 and not Kshs.10,500/- as at February, 2024 as alleged by the Tenant.
    - iii. The Tenant as a serial rent defaulter should be ordered to pay all the rent arrears and vacate the premises.
    - iv. She was entitled to levy distress as there was rent in arrears.
    - v. Had never had a local or verbal agreement with the Tenant not to pay rent.
  9. The parties appeared in court on the 13<sup>th</sup> May 2024. However the Tenant was absent despite the date having been taken by consent. The landlady made a choice to rely on the pleadings on record and requested the court for a Ruling date.
  10. Having perused all the pleadings as filed by the parties and in consideration of the law. We are of the view that the issues for determination in this matter are the following:-
    - A. Whether the Tenant’s Application is merited.
    - B. Whether the landlord’s application has merit.
    - C. Who should bear the costs of the suit.



**Issued No. (A) Whether the Applicants/Tenants application dated 27<sup>th</sup> February 2024 has merit.**

11. From the evidence availed by the Tenant, it is plain that she is not candid with the court. She spoke from both edges of her mouth. She indeed blew cold and hot. It is inexplicable that she had the audacity to assert that the rent for the demised premises was Kshs.3,500/-. This despite the fact that she had been paying rents at Kshs.35,000/- pursuant to annexure “MW1” by the landlord and which she never questioned nor disputed.
12. There were also demand letters for payment of the rent in arrears dated 26<sup>th</sup> January 2024 (Annexure “MW2”) and 8<sup>th</sup> February 2024 (Annexure MW4”) which she also never disputed nor responded to. The landlady was able to present evidence that the Tenant had not paid rent since September, 2022 and she was also not able to contradict or rebut that.
13. The Tenants claim in one breath that she never owed any rent in arrears on the other that she owed Kshs.10,500/- and further on the other hand that she needed time to work on a scheme to pay the rent in arrears as claimed by the landlord is not only amazing but also sad.
14. The orders sought by the Tenant herein are equitable reliefs. In our view, she is not deserving of the same. She is not equitable in her conduct and actions. In the case of *Samuel Kipkorir Ngeno & Another – vs- Local Authorities Pension Trust (Registered Trustees) and Another* (2013) eKLR, the High Court held that,

“A Tenant’s first and main obligation is to pay rent as and when it becomes due, for the landlord has a right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent”.

15. The court further emphasized on the requirements for a tenant to qualify for the grant of orders of injunction. It held that:-

“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 the refuge of a tenant who fails to meet his principal obligation of paying rent as and when It becomes due”.

16. The Tenant herein owes the landlord rents from effective September, 2022 to date. The total owed to the landlady including the rent for the month of June, 2024 is Kshs.735,000/-. It is our view that with these huge rent arrears, the Tenant has abdicated her cardinal obligations as a Tenant. We would therefore dismiss her application dated 27<sup>th</sup> February 2024 as lacking in any merit.

**Issued No. (B) Whether the landlady’s application has merit.**

17. The landlady had among other prayers sought that this court does vary or set aside its orders made on the 27<sup>th</sup> February 2024 in favour of the Tenant. With the dismissal of the Applicant’s application, that prayer has already registered success. The impugned orders become obsolete as a consequence of the dismissal of the application dated 27<sup>th</sup> February, 2024.
18. Prayers No. 3 and 6 were to secure the demised premises. The landlady’s fear was that the Tenant intended to discreetly vacate the same without paying the huge rent arrears. Also denying her an opportunity to recover the rent arrears through the levy of distress. In our view, the orders issued on



the 20<sup>th</sup> March 2024 answered those prayers by the landlady. We however did not order for the locking up of the premises as it did not find recognition under the law and was also not good for business.

19. The landlady further prayed that this court do compel the Tenant to pay the rents in arrears at Kshs.630,000/- then. She also sought to levy distress in recovery of the same. We appreciate that the landlady was able to provide elaborate evidence on the rent arrears owed her by the Tenant.
20. She produced annexures MW2 and MW3 which are demand letters for the rent arrears and annexure “MW4” which are bank statements which demonstrate that the Tenant’s last date of payment of rent was in September 2022. We are therefore not in any difficulty in confirming and in essence determining that the tenant owes rents in arrears to the landlady at Kshs.735,000/- as at June, 2024. This is by informed the provisions of the schedule to the Act and in particular clause (VIII) thereof which provides that:-

“The lessee shall pay rent for the premises in advance”.

21. We therefore command the Tenant to pay the rent in arrears at Kshs.735,000/- immediately and in default the landlord shall be at liberty to levy distress in recovery of the same. We need to disabuse the notion that the landlord required the license of this court to execute levy of distress. The [\*Distress for Rent Act\*](#) at Section 3(1) provides that:-

“Subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears 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”.

22. This position has further been fortified by decisions of superior courts. We refer to the case of [\*John Thumbi Kamwathi – vs- Asha Akumu Juma\*](#) (2018) eKLR where the High Court held that:-

“It follows that the Appellant had a right to levy distress for recovery of the rent owed. The issue arising is whether he was required to seek permission from the Business Tribunal. The provision relied on by the Respondent provides for the various powers of the Tribunal. I have perused the Act but I find no provision to the effect that such permission is sought”.

23. The High court which was sitting at Embu concluded thus:-

“I find that the Appellant had no obligation to seek permission from the Tribunal to levy distress. Distress is a right the landlord is entitled for recovery of rent”.

The upshot of this is that the landlady was at liberty to engage a licensed auctioneer to levy distress in recovery of the rent arrears without recourse to this Tribunal. This court is not donated with a role, mandate or function in such a process”.

24. The Landlady has also sought that the Tenant be ordered to deliver vacant possession of the demised premises. We decline the invitation to make such an order. The landlady has not laid any infrastructure for such an order. Section 4(2) of the [\*Act\*](#) provides that:-

“a landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the Tenant, any term or condition in, or right or service enjoyed by the tenant, under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.



25. Regulation 4(1) of the Regulations to the [Act](#) prescribe the form of such a notice. It provides that:-

“ A notice under Section 4(2) of the Act by a landlord shall be in form A in the schedule to these Regulations”.

26. It is plain on the face of it that the landlady has never issued a notice to terminate as known to the law. Indeed from the materials placed before us, they cannot inform a decision to the effect of termination of the tenancy herein. We therefore decline to allow the prayer.

**Issue No. C- Who should bear the costs of this suit.**

27. To start with, it is our view that a determination on the applications herewith as above have fully compromised the Tenant’s application dated 27<sup>th</sup> June 2024. We would therefore decide the reference in the same terms with the said applications. More so the Tenants application dated 27<sup>th</sup> February 2024.

28. On the costs, we adopt the wisdom of the proviso to Section 27 of the [Civil Procedure act](#). We would accordingly award costs to the landlady of both the Applications and the reference.

29. In the final analysis, we proceed to make the following orders.

- i. That the Tenant’s application and reference both dated 27<sup>th</sup> February 2024 are dismissed.
- ii. That the Tenant is ordered to immediately settle the rent in arrears including that for the month of June 2024 at Kshs.735,000/- and in default the landlady to levy distress in recovery thereof by use of a licensed Auctioneer.
- iii. The Tenant shall pay costs to the landlady assessed at Kshs.30,000/-.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF JUNE, 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

**3RD JUNE 2024**

Ruling delivered in the presence of Mr. Alovi for the Landlady and Mr. Nabibia for the Tenant.

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

**3RD JUNE 2024**

