



**On House Of Worship Wtcdieki t/a House of Worship WTC v Nyumba Link Limited & another (Tribunal Case E233 of 2024) [2024] KEBPRT 1113 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1113 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E233 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
JULY 16, 2024**

**BETWEEN**

**JUSTUS ONDIEKI T/A HOUSE OF WORSHIP WTC ..... APPLICANT**

**AND**

**NYUMBA LINK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NEXTGEN AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Tenant originated these proceedings by his reference dated 15<sup>th</sup> February 2024. The same is anchored on Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering establishments\) Act](#) (Cap. 301) hereinafter the Act. The Tenant's complaint was that:-

“The landlord has told me to vacate the business suit premises or else he is going to use an alternative to forcefully evict me from the suit premises.
2. Filed with the reference is the notice of motion of even date. In principal, the Tenant sought for the following reliefs:-
  - i. That he be allowed quiet possession of the demised premises”.
  - ii. That the Landlord be restrained from levying distress on the Tenant's properties in recovery of rent arrears.
  - iii. That the landlord be restrained from disconnecting power and water from the demised premises.
3. The Tenant further filed the further affidavit sworn on the 12<sup>th</sup> April 2024.



4. On their part, the Respondents filed the Replying Affidavit sworn on the 14<sup>th</sup> March 2024 by Lawrence Mutisya, the further affidavit by the same person sworn on the 23<sup>rd</sup> May 2024 and eventually the submissions dated 24/5/2024.
5. At this point, we would wish to briefly state the respective cases for both parties. The case for the Tenant is that:-
  - i. The Landlord intends to evict him so that it could rent out the premises at higher rents.
  - ii. It had only defaulted in rent payment due to an illness that afflicted the family and poor business.
  - iii. The business has been disrupted by auctioneers who had been frequenting the demised premises and also the high fees paid to the auctioneers.
  - iv. The rent owed to the landlord was not certain as it was also claiming Kshs.43,000/- for a room that he was not aware about.
  - v. He therefore sought that the application be allowed.
6. On its part, the landlord stated its case as follows:-
  - i. That the Tenant was a serial rent defaulter who owed Kshs.479,000/- in the current iBank statements were offered as evidence.
  - ii. The Tenant had been making commitments to pay the rent arrears but all had been in vain.
  - iii. It was entitled to levy distress in recovery of the rents in arrears and also to obtain vacant possession.
  - iv. That though the notice to vacate was not in the prescribed form, the same was in compliance with all the requirements of the law.
  - v. It therefore sought to be allowed to levy distress in recovery of the rents in arrears and for the Tenant to deliver vacant possession or be evicted.
7. We have taken cognizance of all the parties pleadings as aforestated including the submissions thereof and are of the view that the issues for determination in this matter are the following:-
  - A Whether the Tenant's application has merit.
  - B. Whether the landlord's termination notice is lawful.
  - C. Whether the landlord has a right to levy distress.
  - D. Who should bear the costs of this application.
8. It is our view that a determination of the above issues will have also compromised and resolved the reference herein with finality. Therefore the determination of this application will resolve the reference in the same terms.

**Issue No. A - Whether the Tenant's application has merit.**

9. Though the Tenant has claimed that he is not in any rent arrears, he has not in anyway produced any evidence to contradict the elaborate evidence of the landlord coupled with Bank statements on the rent arrears.



10. Indeed the Tenant had an obligation to proof that he did not owe the rents to the landlord or contradict the figures by the landlord. This he did not do.

Section 107 of the [Evidence Act](#) provides that:-

“Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.

9. In our view, this obligation was not discharged by the Tenant. Indeed even when given time by the court to settle the rent arrears which he was not disputing, he never complied with the orders and therefore the orders earlier granted to him were vacated on the 12/6/2024 and the landlord was allowed to levy distress.
10. This is a plain case where the Tenant is not meeting his cardinal obligations by paying rent as it falls due and cannot be allowed refuge by this court to avoid such obligations. The High Court in the case of [Samuel Kipkorir Ngeno & Another v Local Authorities pension Trust \(Registered Trustees\) & Another](#) (2013) eKLR the court 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 underserving 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”.

We therefore find no merit in the Tenant’s application and dismiss the same.

#### **Issue No. B- Whether the Landlords notice is lawful.**

13. The landlord’s notice dated 2<sup>nd</sup> October 2023 was to take effect on the 31<sup>st</sup> November 2023. The never took any steps to actualize the same. We suspect that this was informed by the appreciation that the same was not in compliance with the law and was therefore illegal.
14. The purported notice was not in the prescribed form as mandatorily required by Section 4(2) of the [Act](#) and Regulation 4(1) of the [Regulations](#) to the [Act](#). It also was in conflict with Section 4 (4) of the [Act](#) as the notice was for less than the two months required by the law. The earliest that the notice should have taken effect was on the 1<sup>st</sup> January 2024 to allow the Tenant the two clear months of November and December, 2023.
15. It is our determination therefore that the said notice dated 2<sup>nd</sup> October 2023 was unlawful. In this we rely on the case of [Manaver N. Alibhai T/a Diana Boutique v South Coast Fitness and Sports Centre](#) (1995) eKLR where the Court of Appeal held that:-

“The [Act](#) lays down clearly and in detail, the procedure for the termination of a controlled tenancy, section 4(1) of the [Act](#) states in very clear language that a controlled tenancy shall not terminate or be terminated, and no term or condition in, or right or service enjoyed by the Tenant of, any such tenancy shall be altered, otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the Tenant. The notice must also specify the grounds on which termination is sought. The prescribed notice in form A also requires the landlord to ask the Tenant to notify him in writing whether or not the Tenant agrees to comply with the notice”.



**Issue No. C- Whether the Landlord has a right to levy distress in recovery of rent arrears.**

16. We have determined that the Tenant owed Kshs.479,831 as at May, 2024. The rent payable for the demised premises is Kshs.60,000/- per month. That is rent in arrears for almost eight (8) months. It is important to note that this court had by its orders made on the 12/6/2024 allowed the landlord to levy distress in recovery of the rents in arrears. This position has not been reversed nor reviewed.
17. As that may be, the landlord has inherent right to levy distress as long as there are 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 rent or rent service in arrears and due upon a grant, lease, demise or contract shall have 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”.

18. Only to add that for a landlord to exercise that right, he does not require the permit by any court. In the case of [John Nthumbi Kamwithi v Aisha Akomu Juma](#) (2018) eKLR, the High Court sitting at Embu held that:-

“I have perused the Act but I find no provision to the effect that such permission be sought. 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”.

**Issue No. 4 Who should bear the costs of this application.**

19. On this issue, we seek guidance from the proviso to Section 27 of the [Civil Procedure Act](#) and grant costs to the Landlord who was unnecessarily dragged to court. The proviso provides that:-

“Provided that the costs of any action cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order”.

20. In the final analysis, the orders that commend to us are the following:-
- (i) That the application and reference both dated 15/2/2024 are dismissed.
  - (ii) That the landlord’s notice of termination of tenancy dated 2<sup>nd</sup> October 2023 is declared as unlawful and of no legal effect nor consequence.
  - (iii) That the landlord is at liberty to levy distress in recovery of the rents in arrears which were at Kshs.479,831 as at May, 2024.
  - iv. That the Tenant shall pay costs to the Landlord assessed at Kshs.20,000/-.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16<sup>TH</sup> DAY OF JULY 2024.**

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

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**



Ruling delivered in the presence of M/S Kariuki holding brief for M/S Oketch for the Landlord/Respondent and in the absence of the Tenants/Applicants.

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

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

