



**Ngorika Farmers Cooperative Society v New Ngorika Milk Products Limited
(Tribunal Case E125 of 2023) [2024] KEBPRT 1510 (KLR) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1510 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E125 OF 2023
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
AUGUST 15, 2024**

BETWEEN

NGORIKA FARMERS COOPERATIVE SOCIETY LANDLORD

AND

NEW NGORIKA MILK PRODUCTS LIMITED TENANT

RULING

1. This Ruling is on the Tenant's application dated 24/5/2023. It principally seeks to have the respondent restrained from levying distress on its properties lying on title No. Nya/Ngo/1010 in purported rent arrears. The said levy of distress was authorized by this court by the orders made on the 18th March 2024.
2. The said orders were to the effect that:-

“The reference dated 20th July 2023 is allowed in terms that the Landlord is allowed to levy distress in recovery of all the rents in arrears. The landlord is awarded costs assessed at Kshs.20,000/-.
3. Having disposed off the reference, we note that the applicant has not sought for any orders to set aside the pronouncements on the reference made by this court on the 18th March 2023. It is therefore not clear on what would happen if the orders sought in the application dated 24th May 2024 were granted as there is no suit on record.
4. In our view, the applicant should have merely sought for the stay of the orders of this court, setting aside of the same orders and leave to defend the landlord's reference dated 20th July 2023. In the alternative, the Tenant should have filed a complaint under Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301) hereinafter “the Act” if aggrieved by the action of levy of distress by the Landlord.



5. The Tenant never employed the law to that effect and ventured into an adventure without any foundation in law to address and resolve in the issues at hand. The orders sought if granted would be left in a hung situation and not crystalize into any remedy nor resolution to the issues between the parties.
6. We are further persuaded that the application dated 24th May 2024 is incompetent and fatally defective. It has not been denied that the person who administered the oath on the supporting affidavit dated 24th May 2024 namely Muthoni R. Ndungu was not qualified to practice as an advocate of the High Court of Kenya.
7. It is trite law that you have to be a practicing lawyer in good standing as a pre-requisite to administration or continued administration of oath. The *oaths and statutory declarations Act* (Cap 15) of the laws of Kenya under Section 2(1) thereof provides that:-

“The Chief justice by commissions signed by him, appoint persons being practicing advocates to be commissioners for oaths, and may revoke any such appointment”.

8. From the annexure “GMR1” by the respondent, it is clear that by the time Ndungu R. Muthoni was commissioning the supporting affidavit sworn on the 24th May 2024 she was not a practicing advocate or was not qualified to practice law thus the administration of oath to Gabriel Karume Muchemi was futile and in vain”.
9. We would therefore without much ado strike out the application dated 24/5/2024 as being incompetent and fatally defective and a bad idea to say the least.
10. However, we note that by our Ruling dated 8th December 2023, we noted that the amount owed to the respondent to be Kshs.9,3070/-. This was to include the rent for the month of December 2023 at Kshs.9307/- per month pursuant to clause 2(f) of the parties lease agreement dated 28th March 2014.
11. This amount was to increase by 5% annually and therefore the rent for 2024 would be Kshs.9,772.40 per month. Therefore at the time of instructions by the landlord to M/S J.K. Wanderi Auctioneers to levy distress by its letter dated 19th April 2024, the rent due was only Kshs.39,089.60 and not Kshs.180,000/- as alleged.
12. In our view and from our ruling dated 8th December 2023 and the parties lease agreement dated 28th March 2024, the rent payable by the Tenant as at August, 2024 is Kshs.78,179.20. there is no rationale nor any valid grounds for the landlord to have claimed Kshs.180,000/- as rent arrears for the months of between January, 2024 and April, 2024.
13. In this, we have invoked the Tribunals powers under Section 12(1) (e) and 12(4) of the Act to administer substantive justice to the parties despite the incompetence of the application dated 24th May 2024 by the Applicant. Section 12(1) (e) provides that:-

“A tribunal shall have power to make orders upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a Tenant being at any material time in occupation of the premises comprised in a controlled tenancy”.



14. On the other hand section 12(4) of the Act allows this Tribunal to:-

“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complainant relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit”.

15. In view of the above analysis of all the issues before hand, also looking at all the issues matters herein in their totality, the orders that commend to us are the following:-

- i. The application dated 24/5/2024 is struck out for being incompetent and fatally defective.
- ii. That the Tenant shall pay to the Landlord the rent arrears for the months of January, 2024 to August, 2024 at Kshs.78,179.20/- within seven (7) days of the date hereof and in default the landlord shall be at liberty to levy distress in recover of the same at the Tenant's cost.
- iii. That the Tenant shall thereafter continue paying rent as and when it falls due pursuant to the lease agreement between the parties dated 28th March 2024 and in particular clause 2(f) thereof.
- iv. That the Tenant shall pay M/S J.K. Wanderi Auctioneers their costs assessed at Kshs.20,000/- within 14 days of the date hereof and in case of default, execution to issue at their cost.
- v. That the Tenant shall pay to the landlord the costs of this application at Kshs.10,000/-.

Those are the orders of the court.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF AUGUST, 2024.

HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

Ruling delivered in the presence of Mr. Gichuki Nderitu for the Tenant/Applicant and in the absence of the Landlord and his counsel.

HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

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