



REPUBLIC OF KENYA



**Rehema Holdings Limited v Meridian Medical Centre (Tribunal Case  
E537 of 2023) [2024] KEBPRT 815 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 815 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E537 OF 2023  
P MAY, MEMBER  
JUNE 7, 2024**

**BETWEEN**

**REHEMA HOLDINGS LIMITED ..... LANDLORD**

**AND**

**MERIDIAN MEDICAL CENTRE ..... TENANT**

**RULING**

1. The present proceedings commenced through the filing of the landlord's reference dated 26<sup>th</sup> May, 2023. The landlord approached the Tribunal seeking for its intervention over the tenant's default in paying rent which had accrued to the sum of Kshs. 534,000/-. The landlord therefore sought for leave to levy distress to recover the rent arrears.
2. The parties attempted to engage in negotiations with a view of settling the dispute out of the Tribunal but the same did not yield fruit. The reference was therefore set down for hearing where each party called a witness to testify on their behalf.

**Summary of the Landlord's Case**

3. The landlord confirmed that they had leased the premises to the tenant. The landlord stated that the tenant had experienced difficulties in paying for rent and when served with a notice to vacate the premises, they failed to do so. The landlord also accused the tenant of failing to honour the payment plan that they had offered.

**Summary of the Tenant's Case**

4. The tenant's case is fairly straightforward. They admitted to being in default at the time the notice was issued. They stated that they had made a payment plan but the landlord had failed to allow them access to the demised premises to pick their goods and give vacant possession.



## Analysis.

5. At the close of the hearing, the parties filed their submissions in support of their respective positions.
6. A perusal of the tenant's submissions indicates that the jurisdiction of the Tribunal has been challenged. The Tribunal has combed through the record to see whether this issue had been raised before but it seems the tenant folded their hands and only pounced when the case was at its tail end. In the circumstances, the landlord has not had an opportunity to respond to this fundamental issue.
7. According to first principles, pleadings are designed to facilitate the setting out of the plaintiff's claim with sufficient particularity to enable the defendant to respond. Accordingly, a party may not be permitted to raise a ground which is not pleaded because the respondent will not have had an opportunity to rebut it. It is clearly a matter of the justice of the case to see that the party against whom the new point is sought to be taken is not prejudiced by being taken by surprise at the new point on appeal without an opportunity to respond to the issue and have the facts investigated by the trial court.
8. It is trite law that submissions are not evidence: they are only a marketing language of the parties to the Court to agree to their arguments. This was stated by the Court of Appeal in in [\*Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another\*](#) [2014] eKLR, where it was held:

“Submissions cannot take the place of evidence. The 1<sup>st</sup> respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

9. Again, the same Court held in *Avenue Car Hire & Another vs. Slipha Wanjiru Muthegu* Civil Appeal No. 302 of 1997 that no judgement should be written based on submissions since submissions are not a mode of receiving evidence. In case a court were to do so, such a judgement is a nullity. The tenant's new found strategy of urging the Tribunal to down its tools after submitting to its jurisdiction all along is untenable and the same is rejected.
10. As was stated by the Supreme Court in [\*Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others\*](#) [2012] eKLR:

“A Court's jurisdiction flows from either the [\*Constitution\*](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the [\*Constitution\*](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...”

11. The question which arises is whether this tribunal has jurisdiction to order for the levy of distress against a tenant who is in rent arrears and the answer to the question is to be found in Section 12(1) (e) (h) of the [\*Landlord and Tenant \(Shops, hotels and catering establishments\) Act\*](#), Cap. 301 which provides as follows: -

“12. Powers of Tribunals

- (1) A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or



under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

- (a) to determine whether or not any tenancy is a controlled tenancy;
- (b) to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
- (c) to apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;
- (d) where the rent chargeable in respect of any controlled tenancy includes a payment by way of service charge, to fix the amount of such service charge;
- (e) 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;
- (f) for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession;
- (g) where the landlord fails to carry out any repairs for which he is liable—
  - (i) to have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;
  - (ii) to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;



- (h) to permit the levy of distress for rent;
- (i) to vary or rescind any order made by the Tribunal under the provisions of this Act;
- (j) to administer oaths and order discovery and production of documents in like manner as in civil proceedings before the High Court, to require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies, and to issue summons for the attendance of witnesses to give evidence or produce documents, or both, before the Tribunal;
- (k) to award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;
- (l) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;
- (m) to require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend, the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;
- (n) to enter and inspect premises comprised in a controlled tenancy in respect of which a reference has been made to the Tribunal."

12. The process of levying distress for controlled tenancies requires one to obtain the consent of the Tribunal. The Landlord by approaching the Tribunal before levying distress has acted within the full purview of the law.
13. The tenant having admitted to being in arrears, then the landlord's right to levy distress had crystallized. As to the amount due, the tenant has been in occupation of the demised premises. The tenant besides making the payment proposal which they have not honoured failed to take any proactive steps to move their equipment thus hand over vacant possession and stop the rent from accruing any further.
14. In the end, the landlord's reference is allowed in the following terms:
  - a. The landlord to file and serve an updated statement of account within 7 days herein.
  - b. The tenant shall pay the outstanding rent within 14 days upon receipt of the statement of account. In default the landlord shall be at liberty to levy distress without any further reference to the Tribunal.



c. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mudanya for the Tenant/Applicant and in the absence of the Landlord/  
Respondent

