



Keiyo Housing Cooperative Society Ltd v Limo t/a Hotline & another (Tribunal Case E093 & E082 of 2022 (Consolidated)) [2023] KEBPRT 615 (KLR) (11 September 2023) (Ruling)

Neutral citation: [2023] KEBPRT 615 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E093 & E082 OF 2022 (CONSOLIDATED)
A MUMA, AG. CHAIR
SEPTEMBER 11, 2023**

BETWEEN

KEIYO HOUSING COOPERATIVE SOCIETY LTD LANDLORD

AND

SYLUS KIPROP LIMO T/A HOTLINE 1ST TENANT

SAMWEL C KIRISWO T/A MARMAR HOTEL 2ND TENANT

RULING

Parties and their Representatives

1. The Landlord has let out the business premises known as TROCADERO at Eldoret Block 7/72 (hereinafter referred to as “the premises”) situate at Eldoret.
2. The Firm of M/S Joseph C.K Cheptarus and Company Advocates appears for the Landlord.
3. The 1st and 2nd Tenants (hereinafter jointly referred to as “the tenants”) have rented out spaces in the premises situate at Eldoret.
4. The Firm of M/S Anassi Momanyi and Company Advocates appears for the Tenant.

Dispute Background

5. The Landlord approached this Tribunal vide a Reference dated 19th August 2022 that was accompanied by an application of even date wherein he sought to be permitted to distress due to alleged rent arrears.
6. Thereafter, the 1st Tenant filed an Application dated 15th November 2022 wherein he stated that he was aggrieved by the Landlord’s decision to send auctioneer’s to the premises for attachment of his goods.



7. The 1st Tenant denies being in arrears and accused the Landlord of abusing this Tribunal's orders and terming the distress as illegal.

The Landlord's Case

8. The Landlord alleges that the Tenants have rent arrears totaling to Kenya Shillings 366,575/=.
9. On 12th November 2022, the Landlord instructed auctioneers to levy for distress for the aforementioned sum.
10. It is the Landlord's case that this Tribunal should permit them to distress for rent in accordance with the provisions of the [Landlord and Tenants \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301.
11. Additionally, the Landlord filed a Replying Affidavit dated 16th December 2022, a Statement dated 2nd May 2023 and Submissions dated 19th June 2023.

The Tenants' Case

12. The 1st Tenant filed an application dated 15th November 2022 seeking injunctive orders against the Landlord against the attachment of their goods. It was the 1st Tenant's case that they has no rent arrears and the distress was illegal.
13. The 1st Tenant further filed a Supplementary Affidavit dated 16th January 2023, a Statement and Affidavit both dated 13th April 2023 and Submissions dated 23rd June 2023.
14. The 1st Tenant's case is that he has since paid all outstanding rent arrears and therefore the Landlord's reference has been overtaken by events.
15. The 2nd Tenant filed an Affidavit dated 15th November 2022.

Issues for Determination

16. From the background and the parties' respective cases provided hereinabove, this Tribunal finds the following issue for determination:
- i. Whether the Landlord should be permitted to distress?

Analysis and Determination

i. Whether the Landlord should be permitted to distress?

17. I have given fully considered the Reference, Applications and the Response thereto and the Submissions. On termination of a tenancy, section 4 (2) of the [Landlord and Tenants \(Hotels, Shops and Catering Establishments\) Act](#) Cap 301 ("the Act") provides as follows;
- “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.”
18. In the present matter, the Landlord has not produced any evidence to demonstrate that the alleged notice in the prescribed form was issued to the Tenants. There being no valid Notice of Termination of Tenancy on record, I find that the Landlord failed to comply with the provisions of the Act with regard to termination of tenancy.



19. Additionally, Section 12 (1) (h) of the Act gives this Tribunal power to permit the levy of distress for rent.
20. In the case of John Nthumbi Kamwizhi Vs Asha Akumu Juma, Embu HCCA No. 7A of 2016, the court shed light on the right to distress and stated;
- “The right serves the purpose of a remedy for the Landlord to recover rent that may be in arrears. For this right to be enforced, there must be rent in arrears...”
21. In the case of *Caren Okore v Bemuda Holdings Limited [2021]* eKLR this Tribunal held as follows;
- “It is therefore clear that the only requirement for the exercise of the right to levy distress by the Landlord, is there being rent in arrears.”
22. In the present matter, I note that the Tenants have demonstrated that they have since paid the rent arrears by attaching receipts of payment to the Landlord. Therefore, the Landlord has failed to prove the alleged arrears. Having failed to prove the arrears, the Landlord cannot seek to exercise their right to distress.

Orders

- a. In the upshot, I find that the Landlord’s Reference and Application stand dismissed;
- b. The Landlord is at liberty to issue a fresh two (2) months’ notice that complies with the Act if there are sufficient grounds to issue the same;
- c. The Tenants shall continue to pay the agreed monthly rent as and when it falls due failure to which the Landlord is at liberty to distress;
- d. Each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 11TH DAY OF SEPTEMBER 2023 IN THE ABSENCE OF THE LANDLORD AND IN THE PRESENCE OF MOMANYI FOR THE TENANT.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

