



**O'buon & another v Muli & 3 others (Tribunal Case E112 of 2022)
[2023] KEBPRT 19 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 19 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E112 OF 2022
A MUMA, VICE CHAIR
JANUARY 20, 2023**

BETWEEN

DANCAN OCHIENG' OBUON 1ST APPLICANT

GRACE AWUOR 2ND APPLICANT

AND

JOEL MULI 1ST RESPONDENT

WILSON KIMANZI 2ND RESPONDENT

WELSSMEN INVESTMENT PLC LTD 3RD RESPONDENT

BETA BASE AUCTIONEER 4TH RESPONDENT

RULING

A. Parties and Their Representatives

1. The 1st applicant/tenant Dancan Ochieng' Obuon is the tenant and has rented space on the premises known as Umoja Innercore. (hereinafter known as the 'suit premises').
2. The 2nd applicant/tenant Grace Awuor is a co-tenant with the 1st applicant/tenant on the suit premises.
3. The 1st respondent/landlord has rented out the space for the business in the suit premises to the tenant. (hereinafter the "landlord").
4. The firm of JM Mutisya & Company Advocates represents the 1st respondent/landlord.
5. The 2nd respondent/agent is an agent of the 1st respondent/landlord.
6. The 3rd respondent is a limited liability company that owns the property where the suit premises is located.



7. The 4th respondent is an Auctioneers Firm registered under the [Auctioneers Act](#) No 5 of 1996

B. The Dispute Background

8. The tenants filed a reference and a notice of motion under certificate of urgency both dated February 21, 2022 claiming that the 1st and 2nd respondents had cut the water supply and locked and welded the door to the suit premises thereby denying them access despite them paying all the rent.
9. This tribunal proceeded to issue interim orders on February 23, 2022 ordering the 1st and 2nd respondents to re-open the suit premises and reconnect the water supply among other orders.
10. The 1st respondent/ respondent filed a notice of motion under certificate of urgency for stay of the orders given on February 23, 2022 claiming that he is not the landlord and that he was not aware of the suit premises under reference.
11. On February 24, 2022, the tribunal issued an order staying the orders given on February 23, 2022 and scheduled the hearing for April 5, 2022.

C. The Tenants' Case

12. It is the tenants claim that they had secured a tenancy at the suit premises which had continued for close to 13 years and have been paying a monthly rent of Kshs 16,000/=.
13. On May 19, 2022, this tribunal gave an order, ordering *inter alia*, the tenants to pay rent for April, May and June before the next hearing date June 10, 2022.
14. The tenants subsequently filed a notice of motion under certificate seeking *inter alia*, summary judgment against the 2nd respondent and joining the 3rd and 4th respondents to the matter.
15. The tenants further sought that the 4th respondent be restrained from levying distress and this was buttressed by the tenants further affidavit dated November 1, 2022.

D. The 1st Respondent's/Landlord's Case

16. The 1st respondent/landlord filed a replying affidavit dated May 16, 2022 stating that the applicants are tenants to the 3rd respondent and that the tenants had not paid rent for more than 4 months.

E. Issues for Determination

17. From the facts outlined above, one issue commends itself for determination;
Whether the applicants/tenants performed their rent obligations as per their tenancy agreement and as ordered by the court on May 19, 2022.

F. Analysis and Determination

Whether the applicants/tenants performed their rent obligations as per their tenancy agreement and as ordered by the court on May 19, 2022.

18. Article 159 (1) of [the Constitution of Kenya, 2010](#) vests judicial authority to the courts and tribunals established under it. This tribunal is one such tribunal.
19. The tribunal does not issue orders in vain and all orders issued by a quasi-judicial body such as this tribunal must be followed to the letter.



20. At the onset, I refer to section 12(1)(e) & (h) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) which states 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—

- (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;

- (h). to permit the levy of distress for rent;"

21. As illustrated above, this tribunal is empowered by statute to issue various orders and in particular, the orders highlighted above.
22. In the present matter, the applicants/tenants were ordered by the tribunal to pay rent for the months of April, May and June. They failed to produce any receipt evidencing that the payments were made.
23. Further, the tribunal ordered the 1st respondent/landlord to re-open the suit premises and reconnect the water supply. The respondent complied to this order.
24. There being no payment of rent as ordered by the tribunal, the 1st respondent/landlord was at liberty to procure the services of the 4th respondent and levy for distress pursuant to the order issued by this tribunal on May 19, 2022.
25. The orders existed and the 1st respondent/landlord acted lawfully while distressing, an act which the tenant reported to this tribunal on November 2, 2022 leading to certain adverse orders being made after gross misrepresentation by the tenant
26. Orders
27. Consequently, this tribunal makes the following orders:
- The tenants' reference and application both dated February 21, 2022 are hereby dismissed;
 - The 1st respondent/landlord to have possession of the premises;
 - Landlord to reopen the premises if locked and allow the tenant to pick the remaining stock if any after distress;
 - Any deposit to be used to offset the rent arrears;
 - No damages shall be awarded as leave to distress was sought and granted on 19th of may 2022.
 - No orders as to costs.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 20TH DAY OF JANUARY 2023 IN THE PRESENCE OF DUNCAN THE TENANT IN PERSON AND MUTISYA FOR THE 1ST AND 2ND LANDLORD RESPONDENTS.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

