



**Njuguna v Murega (Tribunal Case E539 of 2023)
[2023] KEBPRT 1224 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1224 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E539 OF 2023
CN MUGAMBI, CHAIR
JULY 27, 2023**

BETWEEN

GLADYS NJOKI NJUGUNA LANDLORD

AND

DAVID WANYORO MUREGA TENANT

RULING

1. The Landlord's application dated 23.5.2023 seeks orders that the Tenant be restrained from moving the movable assets currently in the premises known as Thika Municipality Block14/747 Bat MakongeniThika(hereinafter, the suit premises), that the tenant allows the landlord to access the suit premises to take an inventory of all movable and immovable property and keep them properly preserved at the landlord's premises, that the tenant removes himself from the suit premises or be forcefully evicted and an order for vacant possession and eviction be made against the tenant in respect of the suit property.
2. The Applicant's affidavit sworn on 23.5.2023 in support of the application may be summarized as follows hereinunder:-
 - a. That on 1.2.2011, the Applicant entered into a lease agreement with the Respondent/Tenant for a period of one year with the option to review.
 - b. That the agreed monthly rent was Kshs. 23,000/= with the rent being gradually increased to
 - c. Kshs. 40,000/= with effect from 1.6.2021.
 - d. That the tenant has accrued rent amounting to Ksh. 560,000/= as at the time of filing this suit and application.
 - e. That the tenant has also breached the terms of the lease agreement by sub-letting the premises to a bike shop.



- f. That the landlord through his Advocates instructed the firm of M/S Kang'ethe Enterprises Auctioneers to attach the tenant's property.
- g. That the tenant continues to occupy the suit premises despite non-payment of rent.

Analysis and Determination

- 3. The landlord has made the interesting prayer that he be allowed to keep and properly preserve the tenant's movable and immovable property at his (the landlord's) premises. It is not clear from the supporting affidavit why exactly the landlord would want to preserve the tenant's property.
- 4. What however comes out clearly is that the landlord is owed rent by the Tenant and since the tenant has not controverted the landlord's application that he owes the landlord the sum of Kshs. 560,000/= as at the time of filing this suit, I do find on a balance of probabilities that the tenant indeed owed the said rent.
- 5. That said, I do not think an order for the storage and preservation of the tenant's properties is one that I can make, no reason has been given why the tenant's properties need to be preserved and what eventuality the preservation would await.
- 6. The landlord has also made a prayer for the eviction of the tenant from the suit premises. An order of eviction against the tenant would amount to a termination of the tenancy between the parties. For the landlord to achieve this end, Section 4(2) of Cap 301 requires that the landlord issues a notice of termination of tenancy to the tenant so that the tenant is given the opportunity to either agree to or oppose the termination. In the absence of the said notice, the landlord cannot seek termination of the tenancy.
- 7. I have found in the preceding paragraphs that the tenant owes rent in the sum of Kshs. 560,000/=. In these circumstances, the landlord is entitled to levy distress for rent under the provisions of Section 3 of Cap 293, the distress for rent Act.
- 8. Consequently, I will grant leave to the landlord to levy distress for rent against the tenant for the accrued rent arrears. The landlord will also have the costs of the application.
- 9. The landlord's complaint filed herein has been taken care of by the above findings save to add that the landlord is also granted costs of the complaint.
- 10. This file is marked as finalized and closed in the above terms.

RULING DELIVERED VIRTUALLY THIS 27TH DAY OF JULY 2023

HON. CYPRIAN MUGAMBI

CHAIRMAN

27.7.2023

In the presence of;

Mr. Balala for the landlord

In the absence of the Tenant

