



**Nkirote & 3 others v Protasio (Tribunal Case E006 of 2023)
[2023] KEBPRT 1388 (KLR) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1388 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E006 OF 2023
P KITUR, MEMBER
FEBRUARY 24, 2023**

BETWEEN

**ROSELYN NKIROTE 1ST LANDLORD
BEATRICE GUHERA 2ND LANDLORD
WHITNEY KAGENDO 3RD LANDLORD
TRACY MAKENA 4TH LANDLORD**

AND

JANICE PROTASIO TENANT

JUDGMENT

A. Parties And Representatives

1. The Applicants, are the Landlords being owners of property whose details they have given as Block 11/81, Njuri Ncheke Street within Meru town in Meru County.
2. The Landlord is represented by the firm of F. Kaunyangi & Company Advocates.
3. The Respondent, Janice Protasio is a Tenant having rented the premises from the Landlords herein.
4. The firm of Namachanja Wambulwa & Company Advocates represents the Tenant.

B. The Dispute Background

5. Vide Complaint dated 24th February 2023, the Landlords averred that the Tenant had failed to pay rent for more than 15 months contrary to the provisions of Cap 301.
6. Alongside the Complaint, the Landlords filed an Application of even date where he sought, among others, an Order that they be allowed, through an appointed Auctioneer to levy distress on the Tenant's movable items to recover rent arrears amounting to Kshs, 62,000/=.



7. The matter was scheduled for hearing on 21st November 2023 on which date the Tenant failed to appear nor file any response opposing the Landlords' Complaint and Application, which failure resulted in the Landlords' Application being allowed as prayed.
8. In response, the Tenant filed an Application dated 22nd November 2023 seeking, among others, that the Orders of 21st November 2023 be set aside and that the Landlords be restrained from auctioning or evicting the Tenant pending determination of the amount payable to the Landlord.
9. Parties took directions and agreed to dispose of both Applications jointly. The respective responses were duly filed and thereafter Written Submissions which will all be considered in making this determination.

C. List Of Issues For Determination

10. The issues raised for determination are as follows;
 - a. Whether the right to distress has arisen, and how much is due.

D. Analysis And Findings Whether the right to distress has arisen, and how much is due.

11. It is evident that the Tenant herein is indebted to the Landlord and has failed to pay the stipulated monthly rent as obligated as agreed by the parties.
12. The monthly rent payable, as confirmed by both opposing parties is Kshs. 4,000/= monthly. As at 15th November 2023, the Tenant acknowledged that the outstanding arrears stood at Kshs. 38,000/= and not Kshs. 62,000/= as at the date of filing of the Complaint as stated by the Landlord.
13. The Tenant did not give a clear breakdown on how she arrived at that figure. The Landlords, on the other hand, vide Replying Affidavit sworn on 6th December 2023, in paragraph 6 gave a clear breakdown on how the sum had reduced from Kshs. 62,000/= to Kshs. 42,500/= as at 6th December 2023. In the intervening period, the Tenant had made considerable payments whose specific amounts and dates were noted by the Landlords.
14. On the date of filing of Written Submissions, the Landlords conceded that they had received further payments and that the Tenant was left with arrears of Kshs. 30,000/= as at 15th April 2024.
15. As at 4th June 2024 when the Tenant filed her Written Submissions, she admitted being in arrears of Kshs. 29,000/=.
16. It is worth noting that the Landlords are only seeking prayers to distress and not for the Tenant to vacate the premises. In that regard therefore, the Tenant's invitation to consider Section 4 Cap 301 and the Landlord's failure to comply thereto is of no practical relevance.
17. The Tenant further invites us to consider her purported employment by the Landlords for cleaning services she never got paid for. I respectfully decline to consider those issues as they fall outside the jurisdiction of this Tribunal.
18. The relevant provision to rely on is Section 3 of the Distress to Rent Act, Cap 293 which states as follows:



Right of distress

- 1 Subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrear and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case.
- 2 No distress shall be levied between sunset and sunrise or on any Sunday.
19. By her own admission, the Tenant has defaulted in rent payment and remains in arrears.
20. It is evident that the Landlord is entitled to remedy under the [Distress for Rent Act](#), Cap 293 as provided under section 3 as the Tenant is in arrears over the over the Tenancy.
21. As was stated in Samuel Kipkori Ngeno & another v Local Authorities Pension Trust (Registered Trustees) & another [2013] eKLR,

A tenant's first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent?

22. In seeking to make the appropriate orders in view of the foregoing, I am guided by section 12 (1) (e) of Cap 301 which grants the Tribunal 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;

23. In light of the foregoing, I therefore proceed to order as follows;

E. Orders

- a. The upshot is that the Landlord's Application dated 24th February 2023 succeeds and the Tenant's Application dated 22nd November 2023 fails and is hereby dismissed in the following terms;
- b. The Tenant shall clear the arrears of Kshs. 30,000/= as at 15th April 2024 in addition to any rent and incidental costs accrued to date no later than 31st July 2024.
- c. In default, the Landlord is at liberty to proceed to levy for distress of the rent.
- d. The OCS Meru Central Police Station or any other Police station close by to ensure compliance of these Orders and to ensure that peace prevails.
- e. This Ruling settles the Complaint dated 24th February 2023.
- f. Costs are awarded to the Landlords assessed at Kshs. 20,000/=.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 22ND DAY OF JULY, 2024 IN THE PRESENCE OF MS. WAMBULWA FOR THE TENANT AND MS. KAUNYANGI FOR THE LANDLORDS.



HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

