



**Mwaura v Ochwang & another (Tribunal Case E083 of 2023)  
[2023] KEBPRT 618 (KLR) (Civ) (12 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 618 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E083 OF 2023  
A MUMA, AG. CHAIR  
SEPTEMBER 12, 2023**

**BETWEEN**

**DAVID MWAURA ..... APPLICANT**

**AND**

**JANE NABWILE OCHWANG ..... 1<sup>ST</sup> RESPONDENT**

**SAMSON OKALL T/A DASEMY AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**a. Parties and Representatives**

1. The Applicant David Mwaura is the tenant and rented out space from the Respondent on the suit property located in Kimilili Township. (hereinafter known as the ‘tenant’)
2. The tenant/applicant appears in person in this matter.
3. The Respondent Jane Nabwile is the Landlord and the proprietor of the Suit Property. (hereinafter known as the ‘Landlord’)
4. The Landlord/Respondent appears in person in this matter.

**b. The Dispute Background**

5. The Tenant approached the Tribunal vide a Reference dated 15<sup>th</sup> May 2023 and a Notice of Motion application dated 10<sup>th</sup> May 2023 under section 12 and Section 6 of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The tenant was seeking orders restraining the landlord from harassing, evicting them from the premises and levying distress for rent.



6. The landlord has in response to the tenant's reference and application filed a Replying Affidavit dated 25<sup>th</sup> May 2023 claiming that they had the right to levy distress for rent because the tenant failed to pay rent upon demand.

**c. Tenant's Claim**

7. The Tenant has filed a Reference dated 15<sup>th</sup> May 2023 and a Notice of Motion Application dated 10<sup>th</sup> May 2023 seeking that the Tribunal restrain the landlord from evicting them and levying distress for rent.

**d. Landlord's Claim**

8. The Landlord has filed a Replying Affidavit dated 25<sup>th</sup> May 2023 in opposition to the tenant's application.

**E. List of Issues for Determination**

9. The issues raised for determination are as follows;
- a. Whether the tenant should be granted the orders as sought in their application?

**f. Analysis and Findings**

**Whether the tenant should be granted the orders as sought in their application?**

10. The tenant approached this Tribunal seeking protection against the landlord and the auctioneers. The tenant claims that the landlord carted away his goods and auctioned them due to arrears that the tenant owed the landlord.
11. The tenant admits that they are in arrears but that they have been struggling to carry put business since their goods were taken away by the landlord. As such he has been unable to meet his rental obligations.
12. The landlord does not deny the fact that they indeed levied distress and took away the tenant's properties. They however claim that the same was done because the tenant refused to pay rent on demand.
13. I take note that both parties are cognizant of the relationship at hand is a Controlled Tenancy. As a result, it is governed by the provisions of CAP 301.
14. Section 12 (h) of [CAP 301](#) requires that prior to levying distress fir rent, the landlord should seek leave of this Tribunal prior to attaching the tenant's goods.
15. I also take note that the landlord does not disclose how much was recovered from the distress/auction. Instead, they still claim that the tenant is in arrears of Kshs. 187,000.00 less Kshs. 25,000.00 paid after distress.
16. I find that it is very unfair for the landlord to expect the tenant to clear the arrears even after they carted away the goods. The expectation would be that they ought to have recovered what they were owed from the sale and if they did not offer proper accounts as to what the goods were sold at and it shouldn't be at an undervalue.
17. I take note that the tenant during the proceedings of 13<sup>th</sup> July 2023 stated that they are in arrears of Kshs. 120,000.00.



18. The tenant has given a proposal on how to defray the arrears and the same has not been challenged by the landlord.
19. I shall however adjust it slightly and proceed to order as follows;

**g. Orders**

- a. The upshot is that the Tenant's Reference dated 15<sup>th</sup> May 2023 and the Application dated 10<sup>th</sup> May 2023 are hereby partially allowed in the following terms;
- b. The tenant shall clear the arrears of Kshs. 120,000.00 in monthly installments of Kshs. 12,000.00 payable by the 5<sup>th</sup> day of every month.
- c. The tenant shall keep paying rent at the rate of Kshs. 8,500.00 per month as and when it falls due.
- d. Failure by the tenant to adhere to orders (b) and (c) above shall accord the landlord the liberty to distress for rent, break in and take back vacant possession of the premises.
- e. OCS Soweto shall assist in compliance of order (d) above if need arises.
- f. Each party shall bear their own Costs.

**HON A. MUMA**

**Ag Chair/Member**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 12<sup>TH</sup> DAY OF SEPTEMBER 2023 IN THE ABSENCE OF THE PARTIES.**

**HON A. MUMA**

**Ag Chair/Member**

**BUSINESS PREMISES RENT TRIBUNAL**

