



**Home Sence Enterprises Limited v Kisumu Muslim Association Board;
Mzungu Tumbo t/a Sparknet Auctioneers Services (Interested Party) (Tribunal
Case E008 of 2024) [2024] KEBPRT 850 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 850 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E008 OF 2024
CN MUGAMBI, CHAIR
JUNE 7, 2024**

BETWEEN

HOME SENCE ENTERPRISES LIMITED TENANT

AND

KISUMU MUSLIM ASSOCIATION BOARD LANDLORD

AND

**MZUNGU TUMBO T/A SPARKNET AUCTIONEERS SERVICES INTERESTED
PARTY**

RULING

Introduction

1. The Tenant's Application dated 01.03.2024 seeks the following orders;-
 - a. That the Tribunal declares the tenancy as controlled.
 - b. That the Respondents ordered o release and handover the Applicant's properties.
 - c. That the Respondents be prohibited from selling the Applicant's properties.
 - d. That the Tribunal be pleased to issue a permanent injunction in terms of prayer (b) and (c) above.
2. The Tenant's affidavit in support of his Application may be summarized as follows;-
 - a. That the Tenant operates a workshop in the suit premises dealing with school furniture.
 - b. That in the year 2023, the Tenant fell into arrears and the 2nd Respondent proclaimed his goods and eventually attached the goods on 14.02.2024.



- c. That on 14.02.2024, the Tenant was arrested for issuing a bouncing cheque to the 1st Respondent.
- d. The Tenant made good the bounced cheque of Kshs. 130,000/= which the 2nd Respondent purported to convert to his fees and issued the Tenant with a receipt.
- e. That on 18.02.2024, the Tenant made an additional payment of Kshs. 30,000/= to the 1st Respondent and subsequently made a further payment of Kshs. 130,000/= bringing the total of the rent paid to Kshs. 290,000/=.
- f. That even after making the said payments, the Tenant is yet to receive his goods.
- g. That the Landlord wants the Tenant to pay the March 2024 rent yet the Tenant does not have his tools of trade and is thereby greatly prejudiced.

The 1st Respondent's depositions

- 3. The Replying affidavit of Mr. Muga Ismail Haji Mala, the Chairman of the 1st Respondent may be summarized as follows;-
 - a. That the Applicant is a habitual rent defaulter and has on two occasions issued bouncing cheques to the 1st Respondent.
 - b. That the Tenant despite making the payments set out in his affidavit, is still in rent arrears amounting to Kshs. 330,000/= and is therefore not entitled to any orders from court.
 - c. That the Tenant is using the attachment as an excuse not to pay rent.
 - d. That the Applicant's items have already been released but the Applicant is still not paying rent.

Analysis and determination

- 4. The only issue to be determined in this Application is whether the Tenant is entitled to the orders sought in his Application.
- 5. I note from the proclamation of attachment dated 21.12.2023 and the notification of sale dated 04.02.2024, the rent demanded from the Tenant was Kshs. 230,000/=. The Tenant at paragraphs 8, 9 and 10 of his affidavit has stated that he paid a total of Kshs. 290,000/= by end of February, 2024. I have seen a receipt dated 14.02.2024 from the 2nd Respondent for the amount of Kshs. 130,000/= which the 2nd Respondent termed as auctioneers fees, I have also seen a receipt of acknowledgement of Kshs. 30,000/= dated 18.02.2024, a receipt dated 17.02.2024 for Kshs. 30,000/= and another one dated 21.02.2024 for the sum of Kshs. 100,000/=.
- 6. The Tenant on 29.02.2024 wrote to the 1st Respondent and informed it that he had cleared the rent arrears that the 2nd Respondent had been sent to collect. The said letter gives a clear break down of the proponents made and the same is repeated in the Tenant's affidavit.
- 7. It is clear to me that as at the time the Tenant came to court, he had cleared his rent arrears and the only issue that remained was the release of his goods and the auctioneers' fees.
- 8. Granted that the Tenant was in rent arrears at the time the 1st Respondent instructed the 2nd Respondent to levy distress and that indeed the Landlord had the right to levy distress, I do not think the auctioneer was entitled absent an agreement, to appropriate part of the rent as his fees.



9. The statement of account annexed to the 1st Respondent's affidavit shows that the rent owing as at December, 2023 was Kshs. 230,000/=. This agrees with the proclamation and further agrees with the payments made by the Tenant in satisfaction of the rent arrears. That other rent may have accrued after the Tenant had paid the arrears is not relevant to this instant Application.
10. In the circumstances of this case, I will make the following orders:-
- a. That the Respondents are ordered to release the Tenant's goods proclaimed pursuant to the proclamation dated 21.12.2023 and the notification of sale dated 04.02.2024.
 - b. That the 2nd Respondent will serve the Tenant with his bill drawn in accordance with the relevant schedule under the [Auctioneers Act](#) and [Rules](#).
 - c. That in the event of a disagreement as to the fees payable to the auctioneer, the Auctioneer will file his bill for taxation with the relevant body or authority.
 - d. That the Tenant will clear any rent arrears due to the 1st Respondent within the next thirty (30) days failing which the 1st Respondent will be at liberty to levy distress for rent.
 - e. The sum of Kshs. 130,000/= received by the auctioneer and which the auctioneer purported to appropriate as his fees shall be paid by the auctioneer to the Landlord and credited to the Tenant's account.
 - f. Each party will bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF JUNE, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Baganda for the 1st Respondent and in the absence of the other parties

