



**Kyeva v Thairu & another (Tribunal Case E210 of 2022)  
[2023] KEBPRT 203 (KLR) (11 April 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 203 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E210 OF 2022  
A MUMA, VICE CHAIR  
APRIL 11, 2023**

**BETWEEN**

**NAOMI KYEVA ..... TENANT**

**AND**

**PERCY THAIRU ..... 1<sup>ST</sup> LANDLORD**

**SOPHIE WANJIRU THAIRU ..... 2<sup>ND</sup> LANDLORD**

**JUDGMENT**

**Parties And Representatives**

1. The Applicant herein is the Tenant occupying the Landlady's premises in Nyali, Mombasa County within the Republic of Kenya.
2. The Applicant is represented by the Firm of Mwangangi & Associates Advocates.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the Landladies of the Premises that are the subject matter of the present suit and therefore responsible for performing the duties and obligations of the Landlord in the same vein.
4. Both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are appearing in these proceedings in person.

**Dispute Background**

5. *Vide* a Notice of Motion dated 18<sup>th</sup> February 2022 and Reference of even date, the Applicant herein approached this Tribunal seeking orders inter alia, that restraining orders be granted against the Respondents from interfering with the Applicant's quiet enjoyment of the premises, the Respondents be compelled to reconnect electric power in the premises. The Applicant also prayed that the orders if granted, be supervised by the O.C.S Nyali.



## **The Applicants Case**

6. The said Reference by the Applicant dated 18<sup>th</sup> October 2022 is supported by key grounds being that Applicants' rights have been violated by the Landlords/ Respondents' act of illegal distress of the Applicants' goods using Kilimanjaro Auctioneers by a proclamation dated 13<sup>th</sup> October 2022 and threat of eviction from the Suit Premises.
7. The Applicant has sworn a Supporting affidavit dated 18<sup>th</sup> October 2022 in support of her case. The said Affidavit gives the background, context and procedural history of the dispute in respect of the Suit Premises and proceed to provide the evidentiary support to the grounds above stated. She swore that the business she operates is one of workshop/office and shop and the Respondent has refused to connect power supply in the rented premises since the signing of the lease agreement.
8. She further averred that the Respondents have without any good reason levied Distress to her goods through Kilimanjaro Auctioneers by a proclamation dated 13<sup>th</sup> October 2022. She also swore that she has been consistently paying rent until August 2022 when her husband got sick.
9. The Applicant further swore that she operates her business by use of electric power but the Respondents have refused and failed to connect electric power in the premises and consequently she has suffered great loss and damage for lack of revenue. She also averred that the eviction notice is illegal, unprocedural and contrary to the provisions of section 12(4) of [Cap 301](#), Laws of Kenya.
10. Ultimately, the Applicant urged this Tribunal to allow her application as prayed.

## **The Respondents' Case**

11. The 2<sup>nd</sup> Respondent herein, Sophie Thairu filed a Replying Affidavit sworn on 25<sup>th</sup> November 2022, asserting that on 23<sup>rd</sup> October 2020, the Parties herein executed a Tenancy Agreement whose terms the Applicant has breached by inter alia, failing to pay rent as agreed between the Parties, refusing to contribute to the payment of the monthly electricity bill resulting to disconnection of power by KPLC contrary to the terms of the alleged Tenancy Agreement.
12. The 2<sup>nd</sup> Respondent further averred that the Applicant instead, has connected power to the premises without the permission of Respondents exposing them to harassment by KPLC officials. She swore that the Applicant refused to submit to inspection of the premises for renovations by denying the Respondents' brother access to the premises.
13. Further, it was the 2<sup>nd</sup> Respondent's averment that the Applicant decided to withhold rent due and payable for the period between February to May 2022, failed to pay rent due and payable for the period between September to November 2022. To this end, she swore that the Applicant is in arrears of 8 months, however, despite the Respondents' pleadings with the Tenant to pay rent, the Tenant disregarded the same and resorted to punishing the Respondents through expenses incurred through Court procedures.

## **Analysis And Determination**

14. I have given full consideration to the Applicant's Reference, Notice of Motion Application and the rival affidavits. Before I go into the merits of the Application, I wish to state that the jurisdiction of this Tribunal was not contested.
15. In my respectful view, I find that the sole issue that falls for determination is whether the Applicant is entitled to grant of the reliefs sought. I shall proceed to consider and determine the same as follows:



16. I have noted that both Parties acknowledge the existence of a Tenancy Agreement that gave rise to the present contractual relationship between them. The said Tenancy Agreement was produced before this Tribunal and I have had the liberty to read the same. I have also had the liberty of looking at a cost estimate/agreement signed by parties in this cause and all documents filed.
17. I now turn to the question of rent arrears. It is the 1<sup>st</sup> Respondent's case that the Applicant accrued rent arrears for 8 months. During the hearing, and in paragraph 4 of the Affidavit of Naomi Kyeve sworn on 18<sup>th</sup> October 2022, the Applicant admitted and acknowledged the said arrears by stating that she successfully paid her rent until August 2022 when her husband got sick. Further, placing reliance on the cost estimate Agreement it stated that the Applicant was to pay ksh . 7,000 pm till payment of the 133,050 is complete which is approximately 19 months which period runs from October 2020 to May 2022.
18. Subsequently, effective May 2022 henceforth, the Applicant ought to have resumed paying ksh . 14,000 monthly to date being April 2023. I am persuaded and consequently find that the Applicant is in breach of her obligation of payment of rent as and when it fell due under the Agreement.
19. The other issue for determination is the legality or otherwise of the manner in which the Respondents levied distress for rent upon the Applicants, allegedly attached the Applicants' property and threatened to evict her from the Suit Premises. From the record, it is clear that the Proclamation of Attachment dated 13<sup>th</sup> October 2022 relates to the Applicant's goods attached by the Respondents.
20. The right to levy distress for rent is provided for under CAP 301 it ought to be sanctioned by the Tribunal and if note it is illegal there is no evidence of any such leave to levy distress.

#### **Determination**

21. In view of the above, I find that the Applicants did not prove their case on a balance of probability and proceed to dismiss the same with costs. The upshot is that the Applicants' application dated 18<sup>th</sup> October 2022 and Reference of even date lack merit and is dismissed with costs.

In the upshot:

- a. The Applicant to pay the outstanding rent of Ksh. 14,000 pm from May 2022 to date landlord to provide statement less all payments made pursuant to the various court orders. The same to be paid in 90 days in 3 equal monthly instalments.
- b. Tenants to continue paying Ksh. 14,000/- every month as agreed.
- c. The Applicant to complete the ongoing renovations within 30 days.
- d. Each party shall bear their own Costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 11<sup>TH</sup> DAY OF APRIL 2023 IN THE ABSENCE OF THE TENANT AND LANDLORD.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

