



**Mwangi v Chebeti & another (Tribunal Case E137 of 2023)
[2023] KEBPRT 1118 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1118 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E137 OF 2023
M MAKORI, MEMBER
NOVEMBER 21, 2023**

BETWEEN

DAVID K MWANGI APPLICANT

AND

ELIZABETH CHEBETI 1ST RESPONDENT

MATO AGENCY 2ND RESPONDENT

RULING

1. The applicant filed an application 2/8/2023 seeking to restrain the Respondents from levying distress over the suit property situated in Nakuru – K.I.E and where he had been a tenant for over seven (7) years.
2. The Applicant has been paying a monthly rent of Kshs 5,000/= per month and admits some arrears of Kshs 7,000/=. The Respondents on the other hand avers that the Applicant/Tenant has arrears of Kshs 276, 709/= as evidenced in annexure BOT1.
3. At paragraph 2 of the Applicant/Tenant's Supporting affidavit, he stated that he has been paying rent without fail though no evidence to that effect is tabled.
4. That upon thorough perusal of the pleadings and submissions filed by parties, the single most issue for determination is whether the Respondent's right to distress has accrued.
5. Before delving into the issue I wish to note that section 4(1) of [Cap 301](#) provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
6. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in section 7. The grounds stated under this provision and which are applicable herein include; -



- i. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
 - ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy; and
 - iii. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
7. From the record the court was curious to understand which version of narration is believable and well supported. The Tenant averred that he has been paying rent in full and only has arrears of Kshs 7,000/=. The Respondents on the hand disputed that position and in addition to providing breakdown of the amount owing produced some Mpesa Statements for the payments made.
 8. That upon nonpayment of Rent arrears by the Applicant/Tenant, the Respondent decided to levy distress over the suit property. The right to levy distress is reserved under section 3 of the [Distress for Rent Act](#), Cap 293 of the Laws of Kenya, which provides; -

“subject to the provisions of this Act and having any rent or rent service in arrears 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.”
 9. 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.”
 10. That it is with no doubt in my mind that Applicant/Tenant is in arrears and the Respondent subject to following the right procedure are entitled to distress for rent owing from the Applicant/Tenant.
 11. Without paying rent in full and additionally admitting to have some arrears, the Applicant/Tenant approaches this court for orders against the Respondents.
 12. The court was at some point lost by the Applicant/Tenant invoking the estimated improvements costs of Kshs 56,000/= without any evidence tendered nor a link established on how that relates to the payment of rent.
 13. Before concluding this ruling, I wish to adopt what the superior court stated in the case of [Samuel Kipkori Ngeno & Another v Local Authorities Pension Trust \(Registered Trustees\) & Another](#) (2013) eKLR at paragraphs 9 and 12 as follows: -

“9. 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....”



“12 The temporary injunction sought in the present application is an equitable remedy at the court’s discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving the court’s discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due”.

14. In the circumstances of this case, I will therefore allow prayer 3 of the Tenant’s application dated 2nd August, 2023 on condition; -

- i. That the Tenant, over and above paying his usual monthly rent, does pay Kshs 5,000 per month to cover the rent arrears till the arrears are paid in full.
- ii. That in default, the Landlord will be at liberty to levy for distress of rent outstanding.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 21ST DAY OF NOVEMBER, 2023.

HON. MIKE MAKORI (MR.)- MEMBER - 21.11.2023

