



**Lujiri v Rumwe Farmers Co-op Building & 2 others (Tribunal Case  
E480 of 2023) [2024] KEBPRT 323 (KLR) (26 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 323 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E480 OF 2023  
A MUMA, CHAIR & J ROP, MEMBER  
MARCH 26, 2024**

**BETWEEN**

**MILDRED LUJIRI ..... APPLICANT**

**AND**

**RUMWE FARMERS CO-OP BUILDING ..... 1<sup>ST</sup> RESPONDENT**

**HOMEPLUS REALTORS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**PYRAMID AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**A. Parties and Representatives**

1. The Applicant, Mildred Lujiri, (“the Tenant”) rented space for the purposes of carrying out business activities at the suit premises on L.R 209/4985 (“the suit premises”) located at Kibera Darajani within Nairobi.
2. The Firm of Swaka Advocates represents the Applicant/Tenant in this matter.
3. The 1<sup>st</sup> Respondent, Rumwe Farmers Co-op Building County, (“the Landlord”) is the owner of the suit premises.
4. The 2<sup>nd</sup> Respondent, Homeplus Realtors Limited, is the appointed estate agent acting on behalf of the Landlord (“the Landlord’s Agent”).
5. The 3<sup>rd</sup> Respondent, Pyramid Auctioneers, are appointed and authorized by Landlord to act as auctioneers.
6. The Firm of Kimandu & Ndegwa Co. Advocates represents the Respondents in this matter.



## **B. The Dispute Background**

7. The Tenant under a certificate of urgency moved this Honourable Tribunal vide a Reference and an Application dated 12<sup>th</sup> May 2023 seeking restraining orders against the Landlord pending hearing of the aforesaid Application.
8. The Tribunal having considered the Tenant's Application, certified the matter urgent and issued ex-parte orders dated 19<sup>th</sup> May 2023 restraining the Respondents and/or their agents from evicting the Tenant. Further, the Tenant was ordered to pay rent for May and June 2023 and subsequently every month before the hearing on 27<sup>th</sup> June 2023.
9. In response, the Landlord filed a Replying Affidavit dated 8<sup>th</sup> July 2023 alleging that the Tenant had accumulated rent arrears leading to distress for rent.
10. On 12<sup>th</sup> July 2023, the Tenant informed the Tribunal that the suit premises remained locked and the goods had been carted away thereby seeks damages. In light of this, Tribunal ordered the Tenant to file statements and documents within 14 days in support of her claim for damages and the Landlord to thereafter respond within 14 days. Further, hearing was stood over to 22<sup>nd</sup> August 2023.
11. However, on 24<sup>th</sup> July 2023, the Landlord through their advocates filed an application certifying the matter as urgent and sought orders requiring the Tribunal to vacate and set aside its orders issued on 12<sup>th</sup> July 2023 citing the Tribunal did not take into consideration pertinent issues which needed to be addressed.
12. On 2<sup>nd</sup> August 2023, the Tribunal ordered the Landlord to serve its Application dated 24<sup>th</sup> July 2023 before the next hearing on 22<sup>nd</sup> August 2023.
13. When the matter came for hearing on 22<sup>nd</sup> August 2023, Tenant was ordered to file documents and statements within 14 days and the Landlord to respond thereafter within 14 days. The Tribunal further varied its orders requiring the Reference to proceed to a full hearing on 31<sup>st</sup> October 2023. During the hearing, the matter was postponed to 28<sup>th</sup> November 2023.
14. On 28<sup>th</sup> November 2023, the Tribunal ordered each party to comply and file their submissions. The matter was thereafter scheduled for hearing on 23<sup>rd</sup> January 2024.

## **C. Tenant's Case**

15. The Tenant avers that the Landlord has failed to comply with the law in exercising its right to levy distress for rent. Furthermore, the Tenant has faulted the Landlord for denying her access into the suit premises.
16. On 22<sup>nd</sup> January 2024, Tenant filed her submissions based on the Reference dated 18<sup>th</sup> May 2023. In her submissions, Tenant submits that she has been paying rent to the Landlord dutifully and therefore denies any arrears owed. She also faults Landlord for failing to supply the Tenant with an account of the monies owed upon Tenant's request. Additionally, she alleges that the Landlord did not issue proper termination notice thus contravening the law.

## **D. Landlord's Case**

17. The Landlord alleges that during the tenancy, the Tenant only made partial payments as rent on an irregular basis contrary to the agreed terms. The Landlord also avers that the Tenant is a serial defaulter



having accumulated arrears of Kshs. 93,731 being monies for both rent and utility bills. Attached as evidence are Landlord's statements of accounts from 1<sup>st</sup> June 2020 to 1<sup>st</sup> April 2023.

18. The Landlord states that as at the time of filing the motion, Tenant's property had already been distrained for rent arrears. Consequently, Tenant has willingly vacated and Landlord has taken back possession of the suit premises.
19. On 6<sup>th</sup> February 2024, the Respondents through their Advocates filed their written submissions. The Landlord submits that at the time of vacating, the Tenant was in rent arrears of Kshs. 113,112 as revealed from the statements of accounts dating from 1<sup>st</sup> September 2021 to 14<sup>th</sup> May 2023. Additionally, the Landlord states that the application was filed when the Tenant's property had long been attached as distress for rent.
20. The Landlord also confirms that the Tenant has willingly vacated thus possession has reverted to the Landlord.
21. It is the Landlord's position that the proclamation and attachment was lawful as it was done in adherence to the procedural requirements and law. To buttress, the Landlord adduces copies of Auctioneer's notices as evidence sent to the Tenant prior to the attachment by the 3<sup>rd</sup> Respondent upon Landlord's authorization.

#### **E. Landlord's Agent's Case**

22. In its defense, the Landlord's agent concurs with the Landlord that the attachment was lawful and submits that it abided by the law as notices were sent to the Tenant notifying her of the proclamation prior to the attachment.
23. Further, the Landlord's agent submits that it had authority to distrain Tenant's property as adduced from the instruction letter.

#### **F. Jurisdiction**

24. The jurisdiction of this Tribunal was contested.
25. Upon a careful analysis of the facts as stated by both parties, the Tribunal takes notice that the Tenant has vacated the suit premises. Therefore, this Honourable Tribunal is not in a position to hear and determine Tenant's Application dated 12<sup>th</sup> May 2023 since it has already been overtaken by events.
26. However, on the issue of rent payment as stated in the Reference dated 18<sup>th</sup> May 2023, the Tribunal relies on the case of MS Advocates LLP v China Wu Yi (Kenya) Company Limited & another (Tribunal Case 869 of 2020) [2022] KEBPRT 749 (KLR) where it was stated as follows: -

“In addition to the foregoing, the tribunal acknowledges that the relationship between the parties has since terminated and the tenant vacated in July 2021. This then questions whether the tribunal can pronounce itself on the issue of arrears. It is my finding that since the same accrued during the subsistence of the tenancy, the landlord is entitled to the same.”

27. In light of the foregoing and the facts as stated, the rent arrears accrued during the subsistence of the tenancy relationship between the Tenant and the Landlord thereby necessitating the Tribunal's involvement in determining rent arrears owing to the Landlord.

#### **G. Issues for Determination**

28. Therefore, the following are the main issues for determination:



- i. Whether the Tenant is in rental arrears; and
- ii. Whether the Landlord's distress for rent is unlawful.

## **H. Analysis and Findings**

### **i. Whether the Tenant is in rental arrears**

29. The Landlord claims that the Tenant is in rent arrears of KShs. 113,112.00.
30. Section 3 (3) of the CAP 301 Laws of Kenya provides:

“(3) The landlord of a controlled tenancy shall keep a rent book in the prescribed form, of which he shall provide a copy for the tenant and in which shall be maintained a record, authenticated in the prescribed manner, of the particulars of the parties to the tenancy and the premises comprised therein, and the details of all payments of rent and of all repairs carried out to the premises.”
31. In support of the claim, the Landlord has adduced statements of accounts indicating the rent arrears owing.
32. On the other hand, the Tenant has not produced before this Tribunal any evidence or receipts showing proof of payments.
33. Therefore, this Tribunal finds the Tenant is in default and is required to pay rent arrears which has since accumulated to the tune of Kshs. 113,112.00.

### **ii. Whether the Landlord's distress for rent is unlawful**

34. Section 3 of the [Distress for Rent Act](#) codifies Landlord's right to distress for rent as follows:

“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.”
35. Further, under section 4 of the [Distress for Rent Act](#), Landlord or its authorized agent may lawfully sell distrained property to recover the arrears as shown:
  1. Where any goods or chattels are distrained for rent, the person distraining may lawfully sell on the premises or remove and sell the goods and chattels so distrained for the best price which can be obtained for them, towards satisfaction of the rent for which they are distrained, and of the charges of the distress, removal and sale, handing over the surplus (if any) to the owner.
36. Since it has been established that the Tenant is in default of rent arrears owing to the Landlord, section 3 of the [Distress for Rent Act](#) permits the Landlord to proceed and exercise its right to levy distress through sale as provided under section 4. However, this process has to be done with the purview of the legislation.
37. Rule 12 of the Auctioneers Rules, 1997 lays down the procedure of distraining property as follows:
  1. Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—



- a. ....
  - b. prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory, the auctioneer shall sign a certificate to that effect;
  - c. in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;
  - d. on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction;
38. From the evidence adduced, it is clear that the 3<sup>rd</sup> Respondent has complied with the law by issuing relevant notices to the Tenant.
39. However, in the alternative, the [Distress for Rent Act](#) regularizes any unlawful act carried out by the Landlord or its agent provided that rent has legally accrued, as is the case herein.
40. Thus, Section 15 of the [Distress for Rent Act](#) states as follows:
- “Where distress is made for any kind of rent justly due, and any irregularity or unlawful act is afterwards done by the party distraining, or by his agents, the distress itself shall not be therefore deemed to be unlawful nor the party making it be deemed trespasser ab initio, but the party aggrieved by the unlawful act or irregularity may recover full satisfaction for the special damage he has sustained thereby in a suit for that purpose....”
41. Based on the said provision, Tenant has laid no basis for an award of damages to warrant recovery of special damage sustained.
42. Therefore, the Tribunal finds that the distress for rent was legitimate since the rent arrears accrued during the subsistence of the tenancy. Additionally, Landlord has proven compliance with the law through issuance of relevant notices prior to exercising its right to levy distress.

## **I. Orders**

43. In the upshot, the Tenant’s Reference dated 18<sup>th</sup> May 2023 and Application are hereby dismissed in the following terms:
- a. Tenant to vacate and or get their tools of trade from Landlord and or Landlord’s Agent being the 3<sup>rd</sup> Respondent herein;
  - b. Landlord to offset any rent arrear against deposit paid, if any; and
  - c. Each party to bear their own costs.

**HON. A MUMA - AG. CHAIR/MEMBER**

**HON JACKSON ROP - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, delivered and signed at Nairobi on this 26<sup>th</sup> day of March 2024 in presence of Kamau holding brief for Swaka for the Tenant and Wangui holding brief for Ndegwa for the Landlords.



**HON. A MUMA - AG. CHAIR/MEMBER**  
**HON JACKSON ROP - MEMBER**  
**BUSINESS PREMISES RENT TRIBUNAL**

