



Njenga & 2 others v Chatur Properties Limited & another (Tribunal Case E929 of 2019) [2023] KEBPRT 599 (KLR) (Civ) (8 September 2023) (Ruling)

Neutral citation: [2023] KEBPRT 599 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E929 OF 2019
A MUMA, AG. CHAIR
SEPTEMBER 8, 2023**

BETWEEN

JOHN KIMANI NJENGA 1ST TENANT

SYMON NJOROGE MATINDI 2ND TENANT

JOYCE WANJIRU MACHARIA 3RD TENANT

AND

CHATUR PROPERTIES LIMITED LANDLORD

AND

NAIROBI CONNECTION SERVICES AUCTIONEERS AUCTIONEER

RULING

A. Parties And Their Representatives

1. The Applicants as listed above are the tenants and rented space on the suit premises located on Simba Centre LR No 209/138/2 River Road. (hereinafter the “tenant”).
2. The firm of Kimani Kiarie & Associates represent the Tenant in this matter.
3. The 1st Respondent Chatur Properties is the Landlord and the proprietor of the suit property. (hereinafter the “landlord”)
4. The 2nd Respondent Nairobi Connection Services Auctioneers is an auctioneering firm that was instructed by the landlord (hereinafter the “auctioneers”)
5. The Firm of Nyongesa Nafula & Company Advocates represent the respondents in this matter.



B. The Dispute Background

6. The suit was instituted by the tenant vide a Reference and a Notice of Motion Application under Certificate of Urgency both dated 30th September 2019 dated 14th November 2022 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301. The tenant was seeking orders prohibiting the landlord from seizing their properties and restraining the landlords from proceeding with the intended repossession or removal from the premises of the tenant's movable properties.
7. The Respondents have filed a Replying Affidavit dated 12th October 2022 raising the issue that the Tribunal lacks Jurisdiction on the grounds that the tenancy relationship had ceased to exist.

C. Jurisdiction

8. The jurisdiction of this Tribunal is not in dispute.

D. The Tenant/applicant's Claim

9. The Tenant filed a Reference and Application dated 30th September 2019 and seeking protection against the threats of proclamation and eviction by the landlord.

E. The Landlord/respondent's Claim

10. The Respondent filed a Replying Affidavit dated 12th October 2022 opposing the assertions as raised by the tenant in their application and questioning the Jurisdiction of the Tribunal on the basis that there exists no tenancy relationship between the parties.

F. Issues For Determination

- a. Whether the levy of distress by the landlord was lawful?
- b. Whether the tenants are in rent arrears and if so of how much?

G. Analysis And Determination

11. This suit originated from a Reference and Notice of Motion Application both dated 30th November 2019 wherein the Tenant was seeking orders that the landlord be restrained from seizing and auctioning the properties of the tenants.
12. The tenant then filed another application dated 30th September 2022 wherein he was seeking orders that the respondents be compelled to return the stock that they had taken from some of the tenants worth Kshs 3,500,000.00.
13. The landlord in their replying affidavit dated 12th October 2022 and their Further Affidavit dated 7th November 2022 stated that by the time the tenant was making this application, the orders sought had already been overtaken by events.
14. This is by virtue of the fact that the respondents had already proceeded to auction the tenant's goods. As such the sale had already occurred. The application was made on 30th September 2022 while the advertisement for the sale was published on 19th September 2022.
15. The landlord claims that the arrears owed were to the tune of Kshs 3,600,000.00. Additionally, they claim that the amount recovered from the sale was Kshs 400,000.00 yet the stock taken from the tenant was worth Kshs 3,500,000.00.



16. The tribunal fails to understand why the landlord sold the stock at an undervalue instead of the actual value of their stock which would have helped them recover the amount owed.
17. On the other hand, the tenant claims that they paid a deposit of Kshs 1,400,000.00 and that the same should be used to recover any amount that is outstanding as rent arrears.
18. Seeing as the two parties seem to be claiming from each other, I find that the accounts reconcile and as such no arrears are outstanding. There is therefore no payment to be made by the tenant. Any amount owed can be recovered from the deposit paid by the tenant.
19. I therefore proceed to order as follows;

H. Orders

- a. The upshot is that the Tenant's Reference and Application dated 30th September 2019 marked as settled in the terms discussed above and the file is closed.
- b. Each party shall bear their own Costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 8TH DAY OF SEPTEMBER 2023 IN THE PRESENCE OF GATHERU FOR THE TENANT AND KIMAITI FOR THE LANDLORD.

HON A. MUMA

AG. CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

