



**Nduta v Mwangi & another (Tribunal Case E084 of 2022)
[2023] KEBPRT 417 (KLR) (Civ) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 417 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E084 OF 2022
A MUMA, MEMBER
JULY 19, 2023**

BETWEEN

LYNN NDUTA TENANT

AND

MARY MWANGI 1ST LANDLORD

CHARLES WAGANA 2ND LANDLORD

RULING

A. Parties and Representatives

1. The applicant Lynn Nduta is the tenant and rented space on the suit property erected on Plot No. 1/920 situated in Race Course Estate. (hereinafter known as the 'tenant')
2. The firm of Onchari Otiso & Co. Advocates represent the applicant/tenant in this matter.
3. The 1st and 2nd respondents are the landlords are the owners of the suit property and rented out space to the tenant. (hereinafter known as the 'landlord')
4. The firm of N. Ikua & Company Advocates represent the Landlord/Respondent in this matter.

B. The Dispute Background

5. The Tenant has filed a Reference and a Notice of Motion Application dated 6th July 2022 under section 12 (4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The Tenant is seeking that this Honourable Tribunal grants orders restraining the Landlord from harassing them, terminating the tenancy agreement and an order reinstating them back to the premises pending the hearing and determination of this matter.



6. The tenant's reference and Application were dismissed due to non-attendance vide an order of the Tribunal dated 16 January 2023 by my brother Hon Chege and issued on 18th January 2023. Landlord was granted leave to levy distress.
7. The tenant filed an application dated 23rd January 2023 seeking to reinstate the Reference and Application dated 6th July 2022. The said application was upheld and the reference reinstated vide a ruling delivered on 17th March 2023 by my brother Hon Mugambi.

C. The Tenant's and Landlords Claim

8. The Tenant/Applicant filed a Reference and a Notice of Motion Application dated 6th July 2022 seeking to have the landlord restrained from evicting them, harassing them and that the landlord is compelled to open the premises.
9. The tenant also filed an application dated 23rd January seeking to reinstate the reference and application aforementioned above after the same was dismissed for non-attendance.
10. The Landlord/Respondent has filed a replying affidavit dated 25th August 2022 in response to the tenant's application.

D. List of Issues for Determination

11. The issues raised for determination are as follows;
 - a. Whether the Landlord's action to levy distress for rent was lawful?
 - b. Whether the termination notice issued by the landlord and the reasons advanced are valid?

E. Analysis and Findings

Whether the Landlord's action to levy distress for rent was lawful?

12. The tenant approached this tribunal seeking orders that the respondents be restrained from harassing them, evicting them and that they be compelled to allow the tenant free access to the premises.
13. The tenant claims that the landlord had locked the premises with all their tools of trade being inside the premises.
14. The landlord has averred in their replying affidavit that they did not lock the premises, they however admit to having locked the main exit for security purposes. The bordering tenants had complained of vandalism and as a precautionary measure the landlords locked the exit door to protect the tenant.
15. I take note of the fact that the tenant's Application dated 6th July 2022 had on the 18th January 2023 been dismissed for non-attendance. Additionally, in the same orders, the landlord was accorded the liberty to distress for rent owing by the tenant.
16. The tenants filed an application which dated 23 January 2023 wherein no orders were obtained and the matter was set down for hearing on 13th March 2023 and tenant asked to provide proof of rent. The hearing proceeded on 16/3/2023 and a ruling reserved for 17/3/2023.
17. The tenants having not obtained any interim reliefs the landlords seemed to have proceeded to break into the premises and carted away the tenant's goods. The same were however returned on the strength of orders from the police who accompanied the tenant. Though the Tenants lawyers stated they were still unable to do business cause all their goods were damaged.



18. The tenant claims that they incurred losses and damages as a result of the actions of the landlord. The said claim cannot stand by virtue of the fact that the proclamation by the landlord already occurred and was conducted with leave of this Court. Additionally, the same was occasioned by the acts of the tenant failing to comply with their obligations to pay rent.
19. It is my opinion that the minute the landlord proceeded to levy distress for rent the substratum of this suit ceased to exist.
20. I therefore proceed to order as follows;

F. Orders

- a. The upshot is that the Tenant's Reference and Application dated 6th July 2022 are dismissed in the following terms;
- b. The tenant shall hand over vacant possession of the premises failure to which the landlord shall be at liberty to break in to the premises.
- c. OCS Bondeni Police Station to assist with compliance.
- d. Each party shall bear their own Costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 19TH DAY OF JULY 2023 THE ABSENCE OF PARTIES.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

