



**Ndwiga v Ndwiga (Tribunal Case E029 of 2024)  
[2024] KEBPRT 1229 (KLR) (9 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1229 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E029 OF 2024  
CN MUGAMBI, CHAIR  
AUGUST 9, 2024**

**BETWEEN**

**DICKSON NYAGA NDWIGA ..... LANDLORD**

**AND**

**ANTONY MUGENDI NDWIGA ..... TENANT**

**RULING**

**Introduction**

1. The Landlord's Application dated 1.05.2024 seeks an order that the Landlord be allowed to break into the suit premises and to levy distress for rent therein. The Applicant has also sought the assistance of the OCS, Runyenjes police station in the enforcement of the order sought.

**The Landlord's depositions**

2. The Landlord's affidavits in support of his Application may be summarized as follows;-
  - a. That the Tenant has closed and deserted the suit premises since March 2022 and has not paid any rent since the said month and year and has therefore accumulated rent arrears amounting to Kshs. 630,000/=.

**The Tenant's Replying affidavit**

3. The Tenant's replying affidavit sworn on 31.5.2024 may be summarized as follows;-
  - a. That the Tenant runs a milling plant in the suit premises where he has installed heavy machinery and he has been in the premises for five years.
  - b. That in the month of November 2023, the Tenant was unable to carry out the day to day running of the business and he therefore entered into an agreement with the landlord that he



would close down the premises until such a time that he was able to uninstall his machinery which activity required a lot of resources.

- c. That the Tenant admits to being in arrears of Kshs. 240,000/= and not Kshs. 630,000/= as alleged by the Landlord.
- d. That it was agreed between the parties that the Landlord would be paid the rent arrears in eight monthly installments by postdated cheques of Kshs. 30,000/= per month.
- e. That the Tenant is willing to move out of the suit premises by June 2024.

#### **The Landlord's Further depositions**

- 4. The Landlord has denied in his further affidavit that there was an agreement to close down the premises but retain the machinery therein and has further denied that there was even an agreement to pay the rent arrears in installments.
- 5. While stating that the total rent owed is Kshs. 630,000/=:, the Landlord has also denied that there was an agreement that the Tenant would leave the suit premises in June 2024.
- 6. The Landlord has further deposed that the Tenant intends to vacate the suit premises without paying rent.

#### **Analysis and determination**

- 7. The only issue that arises for determination in this Application is whether the Landlord is entitled to the orders sought in the Application.
- 8. It is not contested that the Tenant is in rent arrears. The Tenant admits to owing rent in the sum of Kshs. 240,000/= while the Landlord maintains that the rent owed is Kshs. 630,000/=. The Landlord has not provided a statement of account for the Tenant and neither has he produced a rent book as required under Section 3(3) of Cap 301. Between the two depositions, it is therefore not possible to state the exact rent owed in arrears but for the purposes of the Landlord's Application, it suffices that the Tenant admits to being in rent arrears for a period of eight (8) months.
- 9. The Landlord's right to levy distress for rent is reserved under Section 3(1) of the [Distress for Rent Act](#), Cap 29 of the Laws of Kenya which provides as follows:-

“Subject to the provisions of this Act and any other written law, any person 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.”

It is therefore clear that the Tenant in the instant case has fallen into rent arrears admittedly for a period of eight (8) months, the right of the Landlord to levy distress for rent has therefore crystallized.

- 10. The Tenant has deposed that it was agreed between the parties that the admitted rent arrears would be paid in monthly installments of Kshs. 30,000/= and the Tenant has exhibited postdated cheques to that effect. The Landlord has denied that there was any agreement for payment of the rent in installments. Again, it is the word of the Tenant against that of the Landlord as there was no written agreement between the parties for the payment of rent in installments.
- 11. In the schedule to Section 3 of Cap 301, paragraph VIII thereof provides that “the lessee shall pay rent for the premises in advance.”



In the absence of an express agreement between the parties that the rent would be paid in arrears, it is my finding that the Tenant was in default of that implied term of his tenancy.

12. In the circumstances, I do find merit in the Landlord's Application and allow the same in the following terms;-
- a. That the Landlord is granted leave to break into the suit premises and to therein levy distress for rent.
  - b. That the OCS, Runyenjes police station does provide security during the enforcement of the orders issued herein.
  - c. That the Tenant shall bear the costs of the Application.
  - d. That the prayer for vacant possession in the Complaint dated 15.4.2024 is declined for failure by the Landlord to comply with the provisions of Section 4 of Cap 301 as far as the issuance of a termination notice is concerned.
  - e. That this file is ordered closed and the Reference determined in the above terms.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF AUGUST, 2024**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the absence of the parties

