



**Ominde v Ngamau & 2 others (Tribunal Case E1144 of 2022)  
[2023] KEBPRT 623 (KLR) (15 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 623 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1144 OF 2022  
A MUMA, AG. CHAIR  
SEPTEMBER 15, 2023**

**BETWEEN**

**DICKSON OMINDE ..... APPLICANT**

**AND**

**PAUL NGAMAU ..... 1<sup>ST</sup> RESPONDENT**

**CHASTE CARE PROPERTY MANAGERS ..... 2<sup>ND</sup> RESPONDENT**

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

**RULING**

**A. Parties and Representatives**

1. The applicant Dickson Ominde is the tenant and rented out space from the respondent on the suit property located on Ongata Rongai 4<sup>th</sup> Avenue. (hereinafter known as the ‘tenant’)
2. The tenant/applicant appears in person in this matter.
3. The 1<sup>st</sup> respondent Paul Ngamau is the Landlord and the proprietor of the Suit Property. (hereinafter known as the ‘Landlord’)
4. The 2<sup>nd</sup> respondent is the agent and manages the property on behalf of the landlord.
5. The 3<sup>rd</sup> respondent is an auctioneering firm which was instructed by the landlord to levy distress for rent as against the tenant.
6. The firm of T.M Kuria & Company Advocates represent the Respondents in this matter.



## **B. The Dispute Background**

7. The Tenant approached the Tribunal vide a Reference and a Notice of Motion application dated 2<sup>nd</sup> December 2022 under section 12 of the *Landlords and Tenants (Shops, Hotels and Catering) Establishments Act* cap 301. The tenant was seeking orders restraining the landlord from harassing, evicting them from the premises and levying distress for rent.
8. The landlord has in response to the tenant's reference and application filed an application dated 21<sup>st</sup> December 2023 disputing the assertions by the Tenant seeking to set aside restraining orders issued by the tribunal.
9. The tenant filed another application dated 7<sup>th</sup> June 2023 seeking that the landlord return their goods and tools of trade after they allegedly illegally distressed for rent.

## **C. Tenant's Claim**

10. The tenant has filed a reference and a notice of motion application dated December 2, 2023 seeking that the Tribunal restrain the landlord from evicting them and levying distress for rent.
11. The tenant filed another application dated June 7, 2023 seeking that the landlord return their goods and tools of trade after they allegedly illegally distressed for rent.

## **D. Landlord's Claim**

12. The Landlord filed an application dated December 21, 2022 in opposition to restraining orders issued by this Tribunal on December 5, 2022.

## **E. List of issues for Determination**

13. The issues raised for determination are as follows;
  - a. Whether the tenant should pay arrears by instalments?

## **F. Analysis and Findings**

### **Whether the tenant should be granted the orders sought in their application dated June 7, 2023?**

14. The tenant approached this Tribunal vide the aforementioned reference and application seeking orders restraining the landlord from levying distress and evicting them from the premises.
15. The tenant received orders from the Tribunal on 5<sup>th</sup> December 2022 where the landlord was restrained from levying distress, evicting or harassing the tenant.
16. The landlord, instead of responding to the said application filed their own application seeking to have the orders granted on 5<sup>th</sup> December 2022 set aside.
17. The matter came up for hearing on 20<sup>th</sup> January 2023 before Hon. Patricia May where she noted that the landlord had failed to respond to the tenant's application and instead filed theirs. As a result, she upheld the tenant's reference and application.
18. Thereafter the tenant has since filed an application dated 7<sup>th</sup> June 2023 in which they seek to have the landlord compelled to return their goods and monies which were illegally distressed.
19. The matter came up for hearing on 8<sup>th</sup> August 2023 where the Tribunal again accorded the landlord an opportunity to respond to the tenant's initial application but they still failed to do so.



20. The landlord also alleged that they had been allowed to distress for rent which was not the case.
21. Seeing as the orders issued on January 20, 2023 have not been appealed against, set aside or stayed I find that the landlord's conduct was uncalled for and in blatant disregard of this court's orders.
22. I however take note that from the proceedings of August 8, 2023, the tenant stated that they are still in the premises albeit with threats of eviction from the landlord. They also admitted to being in arrears of Kshs. 180,000.00.
23. As at August 22, 2023, upon payment of rent for the month of August, the tenant admits to owing Kshs. 175,000.00

#### **G. Orders**

24. I therefore proceed to order as follows;
  - a. The upshot is that the tenant's application dated June 7, 2023 is partially allowed in the following terms;
  - b. The tenant shall pay the rent arrears being Kshs. 175,000.00 in 10 months being monthly installments of Kshs. 17,000.00 per month on or before the 30<sup>th</sup> of every month commencing September 2023.
  - c. The tenant shall keep paying rent as and when it falls due being Kshs. 11,500.00 per month on or before the 10<sup>th</sup> of Every Month Commencing October 202
  - d. Failure by the tenant to adhere to orders (b) and (c) above on due dates shall accord the landlord the liberty to distress for rent, break in and take back vacant possession of the premises.
  - e. OCS Ongata Rongai shall assist in compliance.
  - f. The Reference is marked as settled on similar terms.
  - g. Each party shall bear their own Costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 15<sup>TH</sup> DAY OF SEPTEMBER 2023 IN THE PRESENCE OF KURIA FOR THE LANDLORD AND DICKSON OMINDE THE TENANT IN PERSON.**

**HON A. MUMA**

**AG CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

