



**Samson Wambugu Ndegwa t/a S.W Ndegwa & Co. Advocates v City Printng Works
(Tribunal Case E122 of 2023) [2024] KEBPRT 1884 (KLR) (Civ) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1884 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E122 OF 2023
P KITUR, MEMBER
OCTOBER 7, 2024**

BETWEEN

**SAMSON WAMBUGU NDEGWA T/A S.W NDEGWA & CO.
ADVOCATES TENANT**

AND

CITY PRINITNG WORKS LANDLORD

RULING

A. Introduction

1. The Applicant by the name Samson Wambugu Ndegwa trading in the name and style of S.W Ndegwa & Co. Advocates (hereinafter referred to as ‘the Tenant’) is the Tenant of the suit premises known as 1st Floor, Braidwood House, Tom Mboya Street.
2. The Tenant is represented by the firm of M/s Wanga Obora & Associates Advocates.
3. The Respondent by the name City Printing Works (hereinafter referred to as ‘the Landlord’) is the Landlord over the suit premises.
4. The Landlord is represented by the firm of M/s Harit Sheth Advocates.
5. The suit was initiated by the Tenant vide a Complaint against the Landlord for among others, locking up the suit premises and also not accounting for rent paid to the Landlord.

B. Background

6. The Tenant avers that he has been a tenant of the suit premises having occupied the premises from September 2019 and paying monthly rent amounting to Kshs. 25,000/.



7. The Tenant states that they received a letter dated 22nd May 2024 from the Landlord where the landlord intimated their intentions of evicting them over rental arrears owed to the Landlord by the Tenant amounting to Kshs. 1,155,637/-.
8. The Tenant apprehensive of the Landlord's actions, filed a Notice of Motion Application dated 4th June 2024 seeking among others, the following orders:
 - i. That the Honorable Tribunal issue an order temporarily prohibiting and restraining the Landlord from unlawfully evicting the tenant from the suit premises pending hearing and determination of the application.
 - ii. That the Honorable Tribunal issue an order temporarily prohibiting and restraining the landlord from interfering with the tenants occupation of the suit premises pending hearing and determination of the application.
 - iii. That the landlord be compelled to accept the rent set at the rate of Kshs. 25,000/= pending hearing and determination of the suit or in the alternative the tenant be allowed to pay the rent to the Tribunal.
9. The Tenant swore the Supporting affidavit dated 4th June 2024 citing the grounds in support of the notice of motion application.
10. The Landlord filed a Replying Affidavit dated 21st June 2024 sworn by William Wachira an accountant of the Respondent in response to the averments by the Tenant.
11. In the Replying Affidavit, the Landlord accedes to the fact that the Tenant has occupied the premises from September 2019 however raises a dispute on the rent amount and states that the payable rent with respect to the suit property was in the sum of Kshs. 30,000/-.
12. The landlord avers that the Tenant has been in breach of their Tenancy obligation to pay rent by failing to pay their rental arrears amounting to Kshs. 1,185,837/- despite several reminders and numerous notices requiring him to settle the outstanding arrears.
13. The Landlord states that they instructed auctioneers by the name of Rucha Auctioneers to proclaim the properties in the suit premises in distress for the rental arrears however no amount was recovered as the good had no resale value and have instead costed the landlord storage fees in the sum of Kshs. 317,500/-.
14. The landlord disputes the averment by the Tenant with respect to the landlord refusing to accept rental payments by the Tenant and further states that he is ready to receive the same.
15. The Respondent prays for the Tribunal to dismiss the application with costs and further stated that the Tenant is in arrears amounting to Kshs. 1,185,837 plus VAT.
16. I have considered the Tenants Notice of Motion Application, the Landlords Replying Affidavit and the Subsequent submissions and wish to make a determination as hereunder.

C. List Of Issues for Determination

18. The issues raised for determination are as follows;
 - a. Whether the Tenant is entitled to the reliefs sought.



D. Analysis And Findings

Whether the Tenant is entitled to the reliefs sought.

19. By admission of both parties, the Tenant at some point fell in arrears. The dispute only resolves about how much is owing and the computation thereof.
20. The Tenant states that he has been in occupation of the suit premises since September 2019 paying monthly rent of Kshs. 25,000/=.
21. The Landlord on the other hand in its evidence produced a handwritten letter from the Tenant dated 3rd May 2021 where the Tenant confirmed making payment of Kshs. 70,000/- to in settlement of the outstanding arrears, further committing to pay Kshs. 261,825/= over a period of three and a half months 'inclusive of 30,000/= of every month'. This to me, is a clear indication of how much the Tenant was paying in monthly rent, especially so considering the Tenant chose not to rebut this evidence despite filing a Further Affidavit ostensibly to respond to the issues raised in the Landlord's Replying Affidavit. It is therefore my finding that monthly rent is Kshs. 30,000/=.
22. The next issue would therefore be, how much of the rent is outstanding. To answer this, I have examined the numerous correspondences shared between the parties herein.
23. The Tenant admits that sometime in June 2022, the Landlord instructed a firm of Auctioneers to distress for a rental sum of Kshs. 440,584/=. The Tenant produced an annexure being a Letter of Instruction dated 9th June 2022 where the amount indicated was 'Kshs. 440,584/= + 30,000/= '.
24. The Tenant further states that the goods proclaimed were worth over Kshs. 500,000/=, attached and sold the same and that they made a further payment of Kshs. 300,000/= in settlement of the rent due. He however has not provided any evidence backing up his twin assertions.
25. The Landlord, on the other hand states the seized goods were valued at Kshs. 200,000/=. In support of this, the Landlord produced the Proclamation Notices. The Landlord further states that the goods proclaimed and attached could not be sold and have thus accrued storage charges of Kshs. 317,500/=.
26. A Landlord is entitled to the remedy of distress for rent under the [Distress for Rent Act](#), Cap 293. Section 3 provides as follows:-

Right of distress

(1)	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.
(2)	No distress shall be levied between sunset and sunrise or on any Sunday.

27. Additionally, Section 4 of the [Distress for Rent Act](#) provides:-



Distrained goods may be sold under certain circumstances

(1)	Where any goods or chattels are distrained for rent reserved and due upon a grant, demise, lease or contract, and the tenant or owner of the goods or chattels so distrained does not, within fourteen days after distress has been made, and notice thereof (stating the cause of the making of the distress) left on the premises charged with the rent distrained for, pay the rent together with the costs of the distress, or replevy them, with sufficient security to be given to the licensed auctioneer according to law, 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.
(1)	Where any goods or chattels are distrained for rent reserved and due upon a grant, demise, lease or contract, and the tenant or owner of the goods or chattels so distrained does not, within fourteen days after distress has been made, and notice thereof (stating the cause of the making of the distress) left on the premises charged with the rent distrained for, pay the rent together with the costs of the distress, or replevy them, with sufficient security to be given to the licensed auctioneer according to law, 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.

28. The Landlord was therefore within its rights to commence the process of distress for rent as enumerated above. Question is who bears the storage charges when goods are distrained and not sold.



29. From the foregoing, the Landlord took steps necessary in recovery of the outstanding arrears. This process was not halted or in any way interfered with by the Tenant. It would therefore be unfair in the circumstances to lump up storage charges on the Tenant for a process beyond the Tenant's control.
30. According to the Landlord, the sum owed is Kshs. 1,185,837/= as at 21st June 2024. This amount has not however given due consideration to the value of distrained goods of Kshs. 200,000/= and storage charges claimed of Kshs. 317,500/=.
31. The requirements for the grant of temporary orders of injunctions are now well settled as were discussed in the celebrated case of *Giella vs Cassman Brown*.
32. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [CA No.77 of 2012](#) (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.”

33. Guided by the Court of Appeal's holding, I wish to interrogate as to whether the Applicant has established a Prima Facie Case.
34. There is no doubt that the remedies sought in the instant application are equitable. Equity requires that he who comes to equity must do so with clean hands. It is my considered view that at the time of filing this Complaint, the Tenant had outstanding arrears.
35. It is also required that he who seeks equity must do equity. The tenant herein is obligated by law to pay rent for the premises as and when the rent falls due. The Tenant ought to discharge this obligation, which he has not.
36. It is my considered view that the debt is of a considerably large sum. As was stated in *Samuel Kipkori Ngeno & another v Local Authorities Pension Trust (Registered Trustees) & another* [2013] eKLR,

A tenant's first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent?

37. In seeking to make the appropriate orders in view of the foregoing, I am guided by section 12 (1) (e) of Cap 301 which grants the Tribunal power;

(e)	to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;
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38. In light of the foregoing, I therefore proceed to order as follows;
D. Orders



- a. The upshot is that the Tenant's Application dated 4th June 2024 determined in the following terms;
- b. The Tenant shall continue paying monthly rent at the rate of Kshs. 30,000/=.
- c. The Tenant shall clear the arrears of Kshs. 668,337/= as at 21st June 2024 together with any other rental accruals no later than 30th October 2024, failing which the Landlord shall be at liberty to distress for rent.
- d. The Tenant shall additionally hand over vacant possession of the premises to the Landlord on or before 30th November, 2024 failure to which the Landlord shall be at liberty to break in and enter and take over possession with the assistance of OCS Nairobi Central Police Station or any other Police station close by.
- e. This Ruling settles the Complaint dated 2nd February 2023.
- f. Costs are awarded to the Landlord assessed at Kshs. 30,000/=.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon P. Kitur this 7th day of October 2024 in the absence of the parties.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

