Maboneng Limited t/a Maboneng Lounge & Restaurant v Le Blanc Company Limited & another (Tribunal Case E465 of 2025) [2025] KEBPRT 391 (KLR) (29 August 2025) (Ruling)

Neutral citation: [2025] KEBPRT 391 (KLR)

REPUBLIC OF KENYA

IN THE BUSINESS PREMISES RENT TRIBUNAL

TRIBUNAL CASE E465 OF 2025

J OSODO, CHAIR & GAKUHI CHEGE, MEMBER

AUGUST 29, 2025

BETWEEN

MABONENG LIMITED T/A MABONENG LOUNGE & RESTAURANT ..... TENANT

AND

LE BLANC COMPANY LIMITED ..... LANDLORD

AND

ALLAN OTIENO T/A NEXTGEN AUCTIONEERS ..... AUCTIONEER

RULING

A. Dispute Background

1. This matter was commenced by a Reference under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, dated 5th May 2025, with a complaint that the landlord herein, through the auctioneer ordered distress for rent, proclaiming goods worth more than the outstanding amounts and disconnected water and electricity.

2. The tenant/applicant filed a notice of motion under a certificate of urgency dated 30th April 2025 seeking for the following orders; -

    i. That the application be certified urgent

    ii. That the Tribunal issues an order of stay of distress of rent by the Landlord and the Auctioneer (or their agents) at Elysee Plaza, 1st Floor, Kilimani, pending the hearing and determination of the application and main suit.

    iii. That the Tribunal orders that the deposit paid by the Tenant to the Landlord be considered as part of the rental arrears.

iv. That the Tribunal issues an order lifting the proclamation done on 24th April 2025 by Nextgen Auctioneers, together with auctioneer's costs, for items and goods exceeding the rental arrears of KES. 750,000/=.

v. That the Tenant/Applicant be granted peaceful and quiet possession of the suit premises as it makes arrangements to settle the rental arrears pending the hearing and determination of this application and the main suit.

vi. That costs be borne by the respondents.

3. The application is supported by an affidavit of even date in which the tenant deposes that they entered into a lease agreement with the Landlord on 1st May 2024 for premises situated on 1st Floor, Elysee Plaza, Kilimani, Nairobi, for a period of five years (annexed and marked 'VPO-02' is the lease agreement).

4. That the monthly rent was agreed at KES. 150,000, with a deposit equivalent to two months' rent totalling KES. 300,000, duly paid by the Tenant (annexed and marked ''VPO-03' is proof of payment). The premises were initially a hall which the Tenant improved to run a restaurant business that has been in operation until recently when financial difficulties arose.

5. That on 5th November 2024, the Tenant wrote to the Landlord seeking a reduction of rent from KES. 150,000 to KES. 100,000 owing to economic hardships (annexed and marked 'VPO-04' is the letter dated 5th November 2024). Despite a cordial relationship, the Tenant fell into arrears amounting to KES. 750,000 (five months' rent), prompting the Landlord to issue a letter dated 24th April 2025 instructing the Auctioneer to levy distress (annexed and marked 'VPO-05' is the letter dated 24th April 2025). That subsequently, on the same date, Nextgen Auctioneers raided the premises and issued warrants of proclamation and attachment against the Tenant (annexed and marked 'VPO-06' are copies of the proclamation).

6. The tenant avers that the proclamation unlawfully listed items valued at KES. 2,560,000, which is far beyond the rent arrears owed, contrary to the law. He asserts that the proclamation is unlawful and should be set aside, as it amounts to unjust enrichment by the Landlord and Auctioneer. Furthermore, some of the proclaimed goods, including suppliers' stock (alcohol), Von freezers (third-party property), 4 chips fryers, 3 stand gas cookers, and other kitchen equipment, do not belong to the Tenant but are tools of trade protected from distress.

7. The tenant/applicant emphasizes that they already paid a deposit of KES. 300,000, and therefore only KES. 450,000 remains outstanding, which they are willing to settle without harassment from the Auctioneer. The Tenant also wrote letters to the Landlord and Auctioneer protesting the harassment and inflated proclamations (annexed and marked 'VPO-07' are copies of the letters).

8. On 2nd May 2025 the Tribunal issued a temporary stay of the distress for rent pending the determination of the application/reference.

9. The application is opposed vide a replying affidavit dated 16th June 2025 in which the landlord/respondent deposes that they acknowledge the existence of a lease agreement dated 1st May 2024 between the Landlord and Tenant for the suit premises situate at Elysee Plaza, Kilimani, for a monthly rent of KES. 150,000 for five years. However, they aver that the Tenant fell into arrears of KES. 600,000, being four months' rent for August, September, October, and November 2024.

10. That following this default, the Tenant's representatives, Mitchell, Allan, and Victor, met the Landlord on 14th November 2024, where a payment plan was agreed upon. The Tenant undertook to pay both monthly rent and arrears progressively, as outlined in a tabulated schedule, but defaulted on this plan.

11. That due to the Tenant's continued default, the arrears escalated to KES. 1,000,000 and consequently, the Landlord instructed the Auctioneer to levy distress through a letter dated 24th April 2025 (annexed and marked 'KO-1' is the letter of instructions). Acting on this, the Auctioneer issued warrants of proclamation and attachment on 24th April 2025 (annexed and marked 'KO-2' are the warrants of proclamation and attachment). The landlord notes that it was only after these proclamations that the Tenant rushed to the Tribunal seeking stay orders.

12. The landlord dismisses the Tenant's assertion that the proclamation was unlawful, stating that the complaints regarding goods not subject to distress are unsubstantiated attempts to evade liability. They further argue that the Tenant's request to have its deposit considered as part of rental arrears is unfounded and premature, since reimbursement of deposits is subject to a final inspection of the premises at the end of tenancy.

13. The tenant/applicant filed a supplementary affidavit in response thereto dated 17th June 2025 in which he disputes the allegations that he failed to honour the agreed payment plan and accumulated arrears of KES. 1,000,000, clarifying that he had in fact fully paid rent for the months of August to December 2024 (annexed and marked 'VPO-02' are M-Pesa payment records).

14. The tenant maintains that the only outstanding arrears as at 31st December 2024 stood at KES. 450,000, incurred during a difficult period when the Landlord had disconnected water and electricity to the premises (annexed and marked 'VPO-03' is the rent payment schedule).

15. The tenant further emphasizes that the Landlord's disconnection of utilities was unreasonable and directly harmed his business, as customers left negative reviews due to lack of water and electricity (annexed and marked 'VPO-04' is evidence of negative reviews and water-fetching records). He adds that despite repeated requests to the Landlord, no action was taken to restore services (annexed and marked 'VPO-05' are WhatsApp screenshots).

16. The tenant further explains that he is willing and ready to clear the outstanding arrears alongside monthly rent as it falls due, but the Landlord's conduct, including defying Tribunal Orders of 19th May 2025, has frustrated compliance. He also accuses the Landlord of harassing the business under the guise of distress for rent in order to take over the premises.

17. Additionally, the tenant deposes that on 5th June 2025, he received a tax demand from the Kenya Revenue Authority requiring payment of withheld taxes in respect of the premises, further compounding financial difficulties since both the Landlord and KRA are demanding payment (annexed and marked 'VPO-06' is the KRA letter).

18. Finally, the tenant reiterates that the existing circumstances amount to a tussle over which party is entitled to the funds he is supposed to pay as rent.

19. Parties were directed to file written submissions and both complied with the tenant filing his dated 30th April 2025 and the respondents filing theirs dated 15th August 2025. We shall consider both submissions as we deal with the issues for determination.

B. Issues for Determination and Analysis

20. The following issues arise for determination; -

    a. Whether the distress for rent levied was lawful and valid

    b. Whether the tenant is entitled to the orders sought in the application dated 30th April 2025.

    c. Who shall bear the costs of the application?

Issue (a) Whether the Landlord was entitled to levy distress for rent

21. The Tenant, in their Notice of Motion dated 30th April 2025, admitted to owing the Landlord arrears of KES. 750,000, being five months' rent.

22. Section 3(1) of the *Distress for Rent Act*, Cap 293 provides that:

> " 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."

23. Once rent is in arrears, a landlord is lawfully entitled to levy distress. In this case, the Landlord, through instructions dated 24th April 2025, directed the Auctioneer to proclaim the Tenant's property.

24. The Tribunal is guided by *Eben Hardware Hepbjay Ltd v Mugo & Another* (BPRT E063 of 2023) [2023] KEBPRT 461, wherein it was held that a landlord is entitled to recover arrears through distress once default is proved. Similarly, in *Orchards Communications Limited v Suitable Hotels Limited* (BPRT E247 of 2023) [2024] KEBPRT 524, the Tribunal recognized distress as a lawful remedy so long as it is not oppressive or excessive.

25. The Tribunal therefore finds that the Landlord was entitled to levy distress against the Tenant for the admitted arrears of KES. 750,000.

Issue (b) Whether the Tenant is entitled to the orders sought in the application dated 30th April 2025

26. The Tenant complained that the proclamation covered goods worth over KES. 2,500,000, far exceeding the arrears. While the Tribunal does not sit as a valuer of goods, under Section 12(4) of *Cap 301* it can intervene if distress is oppressive or excessive. No independent valuation was tendered in this regard. Accordingly, the Tribunal cannot make a finding of excessiveness, though it cautions that auctioneers must ensure proclamations correspond reasonably to arrears.

27. The Tenant further deponed, and annexed evidence, that the Landlord disconnected water and electricity, directly frustrating the running of its restaurant. This was not rebutted by the Landlord.

28. Disconnection of essential utilities is unlawful interference with a tenant's quiet possession under *Cap 301*. In *Kiangi v Danson* [2023] KEBPRT 1240, the Tribunal restrained a landlord from similar unlawful conduct and recognized the tenant's entitlement to quiet possession.

29. Where a landlord unlawfully denies utilities, it cannot insist on rent for the period during which the tenant was deprived of full use of the premises. The Tribunal therefore holds that rent for the period of disconnection stands waived, as the Landlord cannot benefit from its own wrongful act.

30. The Tenant also sought that its KES. 300,000 deposit be applied towards arrears. Consistent with *Orchards Communications* (*supra*), the Tribunal reiterates that deposits are refundable upon termination and final inspection and not in the middle of a tenancy. That prayer therefore fails.

31. The plea for general quiet possession cannot succeed in the face of admitted arrears, save as already addressed in respect of unlawful disconnection.

Issue (c) Who shall bear the costs of this application?

32. Section 12(1)(k) of *Cap 301* grants this tribunal discretion on costs. Given that the Tenant admitted arrears but also proved harassment by disconnection, the Tribunal holds that each party shall bear its own costs.

C. Final Orders

33. In light of the foregoing, the Tribunal makes the following orders:

    a. The application dated 30th April 2025 is hereby dismissed.

    b. The Tribunal holds that the Landlord's disconnection of water and electricity was unlawful and therefore rent attributable to the period of disconnection is hereby waived.

    c. The Tenant shall pay to the Landlord the admitted arrears of KES. 750,000 less the rent waived for the period utilities were disconnected within thirty (30) days hereof, failing which the Landlord shall be at liberty to levy distress.

    d. All interim orders are hereby discharged.

    e. Each party shall bear its own costs.

    It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH AUGUST 2025

HON. JOYCE AKINYI OSODO - PANEL CHAIRPERSON

HON GAKUHI CHEGE - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:-

Karanja for the tenant/applicant

Mativo for Landlord/respondent.