REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
AT NAIROBI
BPRT CASE NO. E589 OF 2025

CAROLINE GASHERI……TENANT

VERSUS

WORLD BUSINESS CENTRE LTD……1ST RESPONDENT
LYSAJOY AUCTIONEERS……2ND RESPONDENT

RULING

Introduction

1. The Tenant's Application dated 25.5.2025 seeks orders that the Respondents be restrained from evicting the Tenant or in any other way dealing with World Business Centre situated at Nairobi L.R. No. 209/545 pending the hearing and determination of the suit.

The Tenant's depositions

2. The Tenant's affidavit in support of the Application may be summarized as follows;-
   (a) That on 25.5.2025, the Tenant received a letter from the 2nd Respondents Advocates demanding rent arrears while referring to a demand notice dated 11.4.20 25 which has never been served upon the Tenant.
   (b) That the Tenant has never defaulted in meeting her tenancy obligations and there exists BPRT Case No. E315 of 2021 with live orders of injunction.

The Landlord's Replying affidavit

3. The Replying affidavit of Ms. Jackson Muchoki Mwangi, a director of the 1st Respondent sworn on 5.6.2025 may be summarized as follows:-

(a) That the Tenant is in rent arrears amounting to Kshs. 3,426,000/= and upon failure by the Tenant to meet her rental obligations, the Landlord issued to the Tenant a demand letter dated 11.4.2025 and consequently the Landlord instructed the 2nd Respondent to distress for rent.

(b) That there is no existing court order barring the Landlord from collecting rent from the Tenant and further the Tenant has not produced any evidence showing that she has paid the rent arrears.

(c) That the Tenant should be compelled to deposit the rent arrears either in court or in a joint interest earning account pending the hearing of this case.

The Tenant's Supplementary Affidavit

4. The Supplementary affidavit of the Tenant sworn on 17.7.2025 may be summarized as follows;-

(a) That the annexures relied on by the Landlord do not include any formal rent account or invoice breaking down how the sum of Kshs. 3,426,000/= is arrived at.

(b) That there has been no transparent computation showing the alleged arrears month by month or how they were incurred.

(c) That the Tenant was never served with the demand letter dated 11.4.2025.

(d) That no proclamation notice was ever served upon the Tenant and he use of Auctioneers without notice amounts to constructive eviction.

(e) That the Tenant opposes the Landlord's request that the alleged rent arrears be deposited at the Tribunal without first ascertaining the contested rent through documentary proof and fair process.

(f) That the proclamation notice was issued without leave of the Tribunal and after the rent due for the relevant period had been fully settled.

(g) That the Tenant has fully paid her rent and has no outstanding rent arrears.

(h) That the Landlord has previously filed against the Tenant case Numbers E318 of 2021 and E956 of 2020 which it has abandoned.

Analysis and determination

5. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders sought in her Application.

6. The Tenant's case is basically that the levy of distress, for rent instituted against her by the Landlord is illegal for the reasons that no notice was issued demanding rent before the proclamation and that in any event, no the rent was owing at the time the 2nd Respondent proclaimed the Tenant's goods.

7. The Tenant has denied being served with the demand notice dated 11.4.2025. The Landlord on its part has not made any efforts to demonstrate that indeed the Tenant was served with the said letter and in the absence of this demonstration, I am prepared to find and do find that

the Tenant was not served with any formal demand for rent before the 2nd Respondent proclaimed the Tenant's goods.

8. The Tenant has deponed in her supporting affidavit and in her supplementary affidavit that she does not owe the Landlord any rent either in arrears or current. Faced with this deposition, the Landlord has deponed that the Tenant is in rent arrears amounting to Kshs. 3,426,000/=. None of the parties has produced any documentary evidence to support its claims/position.

9. In controlled tenancies, the statute, **Cap 301** seems to place the burden of keeping rental records on the Landlord when at **Section 3(3)** thereof it provides as follows;-

> **"The Landlord of a controlled tenancy shall keep a rent book in the prescribed form of which he shall provide a copy for the Tenant and in which shall be maintained a record authenticated in the prescribed manner of the particulars of the parties to the tenancy and the premises comprised therein and the details of all payments of rent and of all repairs carried out to the premises."**

10. Under **Section 3(5) of the said Act**, any person who being a Landlord fails to keep a rent book or to provide a copy thereof as required by subsection (3) shall be guilty of an offence and liable to a fine not exceeding Two Thousand Shillings or to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

11. The Landlord in these proceedings has not produced the rent book required under **Section 3(3) of Cap 301**. The Tenant who also alleges to have paid her rent to date has not produced any evidence to show that indeed rent

has been paid. In these circumstances, it is the word of the Tenant against that of the Landlord. This impasse can only be broken through a full hearing where both parties will have the opportunity to produce their statements of accounts and all supporting documents in support of their respective positions.

12. The dispute between the parties is one of rent. The rent "owing or not owing" clearly being contested, justice will be better served by allowing the Tenant's Application in terms of prayer 3 thereof.

13. I further order that the Tenant will continue paying rent to the Landlord and if the Landlord declines the rent, the Tenant will be at liberty to move the court appropriately.

14. The costs of the Application will abide the outcome of the suit.

Dated, signed and delivered virtually at Nairobi this 14th day of August 2025

HON. CYPRIAN MUGAMBI
CHAIRPERSON
BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Kamau holding brief for Mr. Swaka for the Tenant and in the absence of the Landlord and Counsel

Court: Mention on 21.8.2025 for directions.