



Ngonge t/a OP Ngoge & Associates Advocates v Coffee Board Of Kenya & 2 others (Civil Case 599 of 2010) [2024] KEHC 13332 (KLR) (Civ) (30 October 2024) (Judgment)

Neutral citation: [2024] KEHC 13332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 599 OF 2010
AN ONGERI, J
OCTOBER 30, 2024**

BETWEEN

**PETER O NGONGE T/A OP NGOGE & ASSOCIATES
ADVOCATES PLAINTIFF**

AND

**COFFEE BOARD OF KENYA 1ST DEFENDANT
CRYSTAL VALUERS LIMITED 2ND DEFENDANT
RACHIER & AMOLLO ADVOCATES 3RD DEFENDANT**

JUDGMENT

1. The plaintiff in this case Peter O. Ngoge t/a OP Ngoge & Associates (hereafter referred to as the plaintiff only) filed this suit by plaint dated 7/12/2010 which he amended on 17/3/2017 against the defendants herein Coffee Board of Kenya, Crystal Valuers Ltd and Rachier & Amollo Advocates (hereinafter referred to as the 1st, 2nd and 3rd defendants respectively) seeking the following orders;
 - i. A permanent injunction restraining the defendants and their agents from evicting the plaintiff or from levying distress on the plaintiffs tools of trade and or from continuing to trespass into the plaintiffs tenancy premises and denying hi peaceful and quiet enjoyment of the said tenancy premises without prior notice sought and granted a mandatory injunction also compelling the defendants to return to the plaintiff all goods and tools of trade attached and auctioned by the defendants auctioneers.
 - ii. General and aggravated damages.



- iii. General damages for the loss of business, damaged reputation, for the unlawful violent invasion auctioning and winding-up of the plaintiffs law firm and for exposing the plaintiff to complaints y clients who were negatively affected by the illegal distress and auction.
 - iv. Interests and costs of the suit.
 - v. An order for the defendants to provide full accounts and receipts for all the payments made by the plaintiff to the defendants throughout the tenancy and to reimburse the plaintiff for excess rent and taxes paid without a valid agreement for rent to the defendant given that the defendants have to-date refused with impunity to prepare a grant a valid tenancy agreement to govern the tenancy.
2. The plaintiff averred in the said plaint that at all material times relevant hereto the 1st Defendant herein intended to lease vide the unsigned letter of offer of a lease dated 11th March 2005 to the plaintiff the business tenancy premises located on the 4th floor office space measuring approximately 398 square feet which office space the plaintiff was also forced by the 1st Defendant to share through a partition with a stranger known as George Ouma Nyakan in equal shares as a condition for securing the lease, at a time when the plaintiff was desperately looking for office space within the Central Business District.
 3. The plaintiff discovered subsequently, after taking possession of the said office space, that the said letter of offer a lease was, however, drawn by unqualified persons contrary to section 34 and 35 of the Advocates Act and to-date has never been signed by the 1st defendant or by ms Bargeine Karanja Mbuu limited who drew it notwithstanding the fact that the plaintiff paid legal fees to the 1st Defendants said Agents for onward transmission to the 1st defendants Advocates [the 3rd defendant herein] to draw, prepare and grant the a valid lease instrument.
 4. The plaintiff is now highly apprehensive that the motive of forcing the plaintiff to share the office space with George Ouma Nyakan was to make it possible for the 1st Defendant and its agents on record to send Auctioneers to attach the plaintiffs tools of trade [which tools of trade are necessary for the operation of a law firm by the plaintiff in the said office space] while misrepresenting the plaintiff's wrongfully attached items or passing them off as George Ouma Nyakan's property as has been done by the Defendants Auctioneers herein provoking the lodgment and amendment of this suit as herein-below explained and stated.
 5. Under the supervision of the 1st Defendants, the plaintiff partitioned the said office space into two compartments with the knowledge and consent of the 1st Defendant as soon as the said letter of offer of lease was signed by the plaintiff on or about 11th March 2005 and the plaintiff allowed or permitted George Ouma Nyakan to occupy one of the compartments as directed by the 1st defendant and as authorized in the said letter of offer of lease [which letter of offer of a lease the defendants did not however sign] in equal shares.
 6. Although each of the two tenants were logically supposed to remit to the Defendant half of what the plaintiff wrongfully perceived as the Agreed rent, the said George Ouma Nyakan defaulted in making any payments to the Defendant thereby Licensing the Defendants to subject the plaintiff to bear the burden of paying all the arbitrary rent including the initial deposit and value added tax while allowing George Ouma Nyakan to enjoy half of the rental office space in one of the said two compartments without paying anything with the full knowledge and consent of the Defendant to the Detriment of the plaintiff.



7. The plaintiffs numerous pleas to the Defendants to compel George Ouma Nyakan to pay what the plaintiff wrongfully perceived as agreed rent to the 1st defendant, despite enjoying half of the rental space, fell on deaf ears.
8. The plaintiffs numerous plea to the Defendants to cancel or delete George Ouma Nyakan's name from the said unsigned and unregistered letter of offer of a lease and to give the plaintiff consent to look for someone else [like a professional colleague] with whom to share the office space and rent as envisaged in the said unsigned letter of offer of a lease also fell on deaf ears as the Defendants continued to harass and embarrass the plaintiff and to deny the plaintiff peaceful and quite enjoyment of the office premises to-date.
9. Furthermore, despite the fact that George Ouma Nyakan subsequently left the premises in the year 2006 with the knowledge of the Defendants, the Defendants continued to instruct Auctioneers to levy illegal Distress on the plaintiff's law firm and passing- off or misrepresenting the plaintiff's tools of Trade as Mr. George Ouma Nyakan's in the proclamation of attachment to the detriment of the plaintiffs business as a law firm.
10. The plaintiff avers that he was and still is not in rent and tax arrears as alleged by the defendants or at all without producing a valid tenancy agreement properly granted and executed by the parties and accordingly at the hearing hereof the plaintiff shall contend that the Defendants were not justified in defaming and violating the fundamental human rights of the plaintiff by sending auctioneers to attach and auction the plaintiffs tools of trade found in the plaintiffs law firm in the said premises while fraudulently misrepresenting the said tools of trade or passing them off as George Ouma Nyakan's property or joint property yet the Defendants knows or ought to have known that George Ouma Nyakan was no longer a tenant in the said premises, Mr. George Ouma Nyakan having left the premises in the year 2006 with the Defendants full knowledge.
11. The plaintiff cannot remember the year when he defaulted in paying the purported demised rent and value added taxes as alleged by the Defendants or at all in respect of the office space allocated to him voluntarily by the Defendants on the 4th floor of Coffee Plaza Building in Nairobi without the defendants producing a valid Tenancy Agreement duly executed by the tenant [plaintiff] and the landlord [1st defendant] in line with the aforesaid unsigned letter of offer of a lease, fixing the amount of tax and rent payable to the defendants.
12. The plaintiffs law- firms tools of trade and filings maliciously destroyed, littered, lost or attached, removed and auctioned by the Defendants Auctioneers contained very useful and confidential information and details of the plaintiff and the plaintiffs clients and at the hearing hereof the plaintiff shall contend that the plaintiffs clients fundamental Human or statutory Rights to confidentiality and to access local justice [for which the plaintiff may be subjected to disciplinary proceedings and risks disbarment or even be sued for damages] has been violated or is threatened by the Defendants said malicious action of illegally auctioning and winding- up the plaintiffs law firm, when there is no rent and value added taxes which is in arrears as alleged by the defendants or at all, in respect of the said office space as allocated to the plaintiff voluntarily by the defendants and without the defendants producing on record a valid Tenancy Agreement properly prepared and granted by the Landlords Advocates [the 3rd Defendant herein] as stipulated in the said letter of offer of a lease dated 11th March 2005, to specify the amount of rent and taxes payable to the defendants.
13. The plaintiff avers that the Defendant defamed the plaintiff, humiliated and embarrassed the plaintiff and lowered the reputation of the plaintiff among his professional colleagues by illegally auctioning and winding-up the plaintiffs law-firm as herein-below stated and by lowering his esteem among his



- clients and future clients and the esteem of his law firm when the Defendants sent Auctioneers to trespass on the plaintiff's firm of Advocates on the 30/11/2010 and to issue a proclamation attaching and undervaluing the plaintiff's tools of trade and fraudulently purporting the said tools of trade to be owned jointly by the plaintiff and George Ouma Nyakan (who was no-longer in the said premises having left the premises in 2006 as aforesaid) in the presence of the plaintiff's clients without producing a valid tenancy agreement specifying the amount of rent and value added taxes payable to the defendants and to aid the parties in working out rent and tax arrears if any.
14. In the mind of the plaintiff's clients and the plaintiff's professional colleagues and to the general public, the malicious and illegal conduct of the Defendants of auctioning and winding -up the plaintiff's law firm was and still is understood to mean that;-
 - a. The plaintiff could not pay his rent.
 - b. The plaintiff was unstable and bankrupt or insolvent and could not run a law firm or a constitutional office.
 - c. The plaintiff was sharing the same office compartment with unqualified person at the time of auction and winding -up of the plaintiff's office.
 - d. The plaintiff is immoral has problems with integrity and could not be trusted by the public and professional colleagues to run a law firm or to vie for any constitutional office.
 - e. The plaintiff is dishonest and the plaintiff claims damages.
 15. The plaintiff believed that he had overpaid the defendants rent but only to realize now that the plaintiff has been operating, speaking and litigating at cross-purposes with the defendants owing to lack of valid Tenancy Agreement; a situation which confused the tenancy, rent and tax accounts and the plaintiff: hence the present amendments.
 16. The plaintiff avers that the defendants have denied the plaintiff quiet possession of the demised premises for a very long period of time and the plaintiff pleads for general damages for trespass and for violating the fundamental Human Rights of the plaintiff and his clients as herein below explained.
 17. The plaintiff avers that owing to the defendants malicious conduct aforesaid which started at the onset of the tenancy to-date the plaintiff's LAW FIRM has been completely crippled and has lost its reputation and has suffered massive loss of business opportunity and clientele base for which the plaintiff ought to be compensated by way of damages due to the Defendants harassments and lack of candidness and courtesy culminating into illegal auctioning and winding up of the plaintiff's said law -firm as herein-below stated.
 18. The plaintiff avers that the Defendants have kept on changing Agents and confusing rent and value added tax accounts [even though rent and taxes has not been agreed upon due to lack of a valid legal Tenancy Agreement] deliberately to unlawful harass auction and wind-up the Plaintiff's law-firm and-has deliberately refused to pursue George Ouma Nyakan for alleged rent.
 19. The plaintiff avers that the Defendants have refused to offer certain basic services which goes with tenancy like adequate security and cleanliness within and around the rental building in violation of the implied term of the tenancy and the plaintiff's fundamental Human Rights enacted in the new constitution i.e. the right to security and Healthy and clean environment and good and merchantable services.
 20. The plaintiff avers that during the day it is virtually impossible to access the building because the Defendants have deliberately allowed large trucks and lorries to park unlawfully and haphazardly



around and in front of the rental building thereby scaring away the plaintiffs potential clients from accessing the plaintiffs office in violation of the implied terms of the tenancy yet the Defendants have been unlawfully and arbitrarily collecting rent and illegal taxes from the plaintiff after imposing the same arbitrarily without a valid tenancy agreement.

21. The plaintiff avers that when it rains, rain water percolates through the old window frames [which requires repair] into the rental offices destroying offices files and cabinets and crucial documents yet the defendants have never bothered to repair the windows or to replace the old window frames so as to prevent rain water from entering the rental offices and damaging the plaintiffs sensitive files. The plaintiff therefore prays for damages.
22. The plaintiff avers that the Defendants aforesaid illegal conduct amounts to impunity and violation of the Rule of law apart from violating the fundamental Human Rights of the plaintiff not to be discriminated against or to be subjected to torture and to unlawful treatment especially when one takes into account the fact that there is no valid Tenancy Agreement to fix rent and taxes and to govern the Tenancy and for which the Defendants are to wholly blame as herein below explained. Accordingly, the plaintiff prays for injunction and damages for trespass and violations of the plaintiffs fundamental Human Rights aforesaid and for gross subversion of the constitution as herein below stated and sought.
23. There is no suit pending between the plaintiff and the defendants and there have never been any previous proceedings touching on the subject matter in issue between the plaintiff and the Defendant save for the appellate proceedings.
24. In spite of demands for accounts and for preparation and granting of the lease instrument and in spite of the previous notices issued to the defendants threatening to sue, the Defendants have persisted in violating the plaintiffs fundamental Human Rights not to be subjected to cruel, unlawful degrading treatment, torture and discrimination, as said [even though it is not disputed that there was no valid tenancy agreement specifying the rent and taxes payable to the defendants and for which the defendants are to wholly blame] and notwithstanding the fact that the plaintiff was and still is willing to pay his rent and taxes once a valid tenancy Agreement is prepared granted and Registered by the Landlords Advocates [the 3rd Defendant herein] in respect of the office space allocated to him [the plaintiff] in line with the said unsigned letter of offer of a lease.
25. This Honourable Court has jurisdiction to hear and determine this suit and to uphold, protect, promote and to guarantee the fundamental human rights of the plaintiff and his clients.
26. Without Prejudice to the foregoing, the plaintiff avers that vide the unregistered letter of offer of a lease dated 11th March 2005 [which letter of offer of a lease was neither signed [executed] by the Defendants herein nor executed by the 1st Defendants then Authorized Estate Agents i.e. Bageine Karanja Mbuu Limited] the plaintiff herein was voluntarily given possession of the office space situated on the 4th floor of Coffee Plaza Building being land Reference Number 209/6545 within Nairobi by the Defendants herein to operate a law firm i.e. the law firm O. P. Ngoge & Associates.
27. The plaintiff avers that it was a mandatory term of the said "letter of offer of a lease" that the tenancy would be strictly subject to a formal lease instrument duly prepared, granted and Registered by the Landlords Advocates [the 3rd Defendants herein] and executed by both parties i.e. the Tenant [plaintiff] and the Landlord [The Coffee Board of Kenya] and clearly specifying the rent payable by the plaintiff to the 1st defendant in line with the said letter of offer of a lease.
28. The plaintiff aver that according to the aforesaid "letter of offer of a lease" the plaintiff [tenant] was required to deposit with the landlord [the 1st Defendant herein] the sum of kshs.10,000/= being legal fees for onward transmission to the landlords Advocates upon execution of the aforesaid letter of offer



- of a lease and in return the landlords Advocates [3rd Defendant herein] was required to prepare grant and register a formal lease instrument duly executed by the parties to govern the Tenancy and as a consequence to give the plaintiff [tenant] quiet possession of the said office space situated on the 4th floor of Coffee Plaza Building in line with Articles 40 and 47 of *the constitution* while observing the covenants contained in the said lease instrument.
29. Further or in the alternative, the plaintiff aver that the tenant [plaintiff] was also required [according to the said unsigned "letter of offer of a lease"] to pay stamp duty arising out of the preparation and registration of the formal lease instrument upon executing the said "letter of offer of a lease" and before the plaintiff could be given possession of the said office space by the Defendants.
 30. The plaintiff aver that despite performing his obligations in full [by paying the said legal fees and the deposit required by the 1st defendant, through the then 1st Defendants estate agents — Bageine Karanja Mbuu Limited, for onward transmission to the landlords Advocates (the 3rd Defendants herein) as stipulated in the said unsigned and unregistered "letter of offer of a lease" and this being the basis upon which the plaintiff/Tenant was given possession of the said office space, the Defendants and their Advocates on record [the 3rd defendants herein] over the years, persistently and deliberately failed ignored and refused to prepare grant and register a formal lease document duly executed by the parties specifying clearly the rent and value added taxes payable by the Tenant/plaintiff and the terms and conditions of the Tenancy and thereby deliberately subverting the mandatory stipulations of the aforesaid unsigned and unregistered letter of offer dated 11th March 2005 to the detriment of the plaintiff [tenant].
 31. The plaintiff contended at the hearing hereof that the absence of a valid Tenancy Agreement duly prepared granted and Registered by the landlords Advocates [the 3rd defendant herein] in line with said letter of offer of a lease left the plaintiff exposed to unlawful exploitation and gross abuse by the defendants and more specifically by giving the Defendants herein the unlawful dominance, discretion and opportunistic advantages to unilaterally fix and levy rent and service charge plus the Value Added Tax not contemplated or Agreed upon by the plaintiff [Tenant] and whenever the plaintiff [tenant] refused to pay such arbitrarily imposed rent and service charges and Value Added Tax the Defendants and their Advocates on record [the 3rd defendants herein] would instruct Auctioneers to intimidate humiliate and harass the plaintiff with proclamations attaching and auctioning the plaintiff's law firm and thereby subjecting the plaintiff and his clients to cruelty and unlawful treatment, to mental and psychological torture, to humiliation, discrimination and loss of reputation and loss of business contrary to Articles 10, 19, 20, 21, 22, 27, 28, 29, 31, 40, 43, 47 and 48 of *the constitution* as read with Articles 14, 16, 17, 21 and 22 of the United Nations Basic Principles on the Role of Lawyers.
 32. The plaintiff aver that on or about the 15th day of March 2011 between 4.00 pm and 6.30 pm, the Defendants herein instructed Auctioneers namely; Integra Auctioneers, who without prior notice, violently invaded the plaintiff's law firm situated on the 4th floor Coffee Plaza, in the company of drunken armed youths, and proclaimed, attached removed, carted- away and eventually Auctioned and wound-up the plaintiff's law firm, under the colour of levying illegal Distress for Rent, notwithstanding the undisputed fact on record to the effect that to date the Defendants have not prepared granted or registered a valid formal lease Agreement specifying the amount of rent and value added taxes payable to the defendants and the terms and conditions of the Tenancy.
 33. The defendants aforesaid Auctioneers namely; Integra Auctioneers responded positively to the said Defendants instructions by violently invading the plaintiff's law firm between 4.00 pm to 6.30 pm on the 15th March 2011 and with the aid of violent Armed youths, who had accompanied the said Auctioneers to the plaintiff's said law firm unlawfully accessed destroyed and disorganized confidential



clients files apart from carting away the plaintiffs tools of Trade, books and some confidential clients files and the plaintiffs confidential documents for Auction and thereby leaving behind irreparable trail of damages loss disorganization and disorder and effectively uprooting the plaintiff from effective legal practice apart from effectively winding- up the plaintiffs legal practice through the backdoor contrary to Articles 10, 19, 20, 21, 27, 28, 29,31, 40, 43, 47 and 48 of the constitution as read with Articles 16, 17, 21 and 22 of the United Nations Basic Principles on the Role of Lawyers meriting the intervention by the court.

34. At the hearing hereof the plaintiff contended that the arbitrary violent invasion and eventual illegal Auction and winding- up of the plaintiffs law firm under the colour of levying distress for rent was unlawful baseless and executed skillfully contrary to Articles 10, 19, 20, 21, 27, 28, 29, 31, 40, 43, 47 and 48 of the constitution as read with Articles 14, 16, 17, 21 and 22 of the United Nations Basic Principles on the Role of Lawyers considering that the Defendants are to wholly blame for refusing to prepare grant and register a formal lease agreement to govern the tenancy as aforesaid.
35. The plaintiff aver that as a consequence of the unlawful trespass violent invasion, Auction and winding-up of the plaintiffs law firm as aforesaid, the Defendants deliberately subverted the plaintiffs Socio Economic Rights as well as the plaintiffs Civil and Political Rights contrary to Articles 2, 3, 4, 5, 6, 13, 14, 15, 16, 17, 19, 22 and 24 of the African Charter which Kenya has ratified and has also incorporated in the constitution as read with Articles 3, 4, 5, 6 and 7 of the International Covenant on Economic Social and Cultural Rights [1966] which Kenya has also ratified.
36. The plaintiff aver that the said unlawful invasion and Auctioning or winding-up of the plaintiffs law firm [which was clinically executed by the Defendants auctioneers under the color of levying illegal Distress for rent as aforesaid] continues, to-date, to subject the plaintiff and his clients to psychological and mental torture and to unlawful treatment, has continued to disorganize the plaintiffs legal practice and thereby putting administration of justice in total disrepute, has destroyed and damaged the reputation of the plaintiff as a lawyer has effectively uprooted the plaintiff from a serious legal practice apart from humiliating and embarrassing the plaintiff and his clients if not predisposing the plaintiff to complaints by some of the plaintiffs clients whose confidential files were unlawfully accessed, destroyed, mutilated littered and scattered or removed and carted - away by the said defendants Auctioneers during the raid which was executed on the 15th March 2011 by the Defendants said Auctioneers who were instructed to act with malice and impunity by the defendants herein who are yet to prepare and grant a valid tenancy agreement after giving the plaintiff herein possession of the tenancy premises.
37. The plaintiff aver that the aforesaid unlawful invasion and Auctioning or winding-up of the plaintiffs law firm by the Defendants lacked moral and legal underpinnings both under the National laws and under the International Human Rights treaties and Norms which Kenya has ratified and the plaintiff accordingly prays that the Defendants be held to account by way of reparations in the form of damages.
38. The plaintiff aver that the confusion being brought about in the dispute by the defendants [deliberately to cloud or mask the real issue] as to whether George Ouma Nyakan was a joint tenant or separate tenant of the 1st Defendant, has been occasioned by the absence of a valid tenancy Agreement [to specify clearly whether the tenancy was joint or separate] for which the defendants are to wholly blame and ought to be held accountable, as aforesaid.
39. The plaintiff aver the confusion and a clear lack of clarity on the amount of Rent and taxes payable to the 1st Defendant by the plaintiff has been occasioned by the Absence of a valid Tenancy Agreement to govern the tenancy and to specify in clear terms the amount of the rent and the value added tax



payable to the landlord [defendants] and for which the defendants are to wholly blame and ought to be held to account, as aforesaid.

40. The plaintiff aver that at the time when this plaint was drawn, filed and presented for Arguments before the Honourable Mr. Justice Mwera [at the interlocutory stage] the plaintiff had not discovered that the letter of offer of a lease dated 11th March 2005 has to-date neither been signed or executed by the Defendants nor by the 1st Defendants then Authorized estate Agents M/s. Begeine Karnaja Mbuu Limited and to emphasize the fact that there is no valid Tenancy Agreement granted by the Defendants herein to govern the tenancy and the Defendants are to wholly blame for the said lapse as aforesaid. In addition, the plaintiff at the hearing thereof
41. The plaintiff contended that the absence of a valid Tenancy agreement also implies that the violent invasion and Auction or winding-up of the plaintiffs law firm by the defendants as aforesaid, under the color of levying illegal distress for rent, lacked moral and constitutional underpinnings in a democratic state governed by the Rule of law meriting award of damages and all the prayers sought hereunder.
42. The defendants filed a defence dated 21/1/2011 and raised the following counterclaim against the plaintiff
 - i. An order that the plaintiff's suit be dismissed in entirety;
 - ii. An eviction order against the plaintiff compelling him to vacate the defendant's premises and give the defendants vacant possession of the sit property.
 - iii. Ksh.257,280 being unpaid rent as at 20th January 2011;
 - iv. All unpaid rent as at the time of judgment;
 - v. Auctioneer costs/fees
 - vi. Interest on (iii), (iv) and (v) at commercial rates from 7th December 2010 until payment in full;
 - vii. Costs of this suit;
 - viii. Interest on (vii) above at court rates from date of filing the suit until payment in full.
43. The defendants averred as follows in the said defence: without prejudice to the foregoing, the Defendants asserted that by virtue of being a tenant at the Defendants' premises, the Plaintiff had and has an obligation to pay rent in a timely manner pursuant to the relevant tenancy agreement.
44. The Defendants aver that the plaintiff failed to make rent payments to the defendant promptly or at all, in violation of his tenancy obligations under the tenancy agreement.
45. The Defendants aver that the Plaintiff owed the defendants unpaid rent being the sum of kshs.257,280 in respect of unpaid rent arrears due as at 20th January 2011 and the defendants claim the same.
46. The Defendants also engaged Integra Trading Company auctioneers in a bid to levy distress for unpaid rent against the plaintiff's assets, and incurred Auctioneer charges in this regard. The plaintiff has willfully neglected and refused to settle these auctioneer fees and the defendants claims the same from the plaintiff.
47. The plaintiff is still resident at the defendant's premises and has refused, neglected and failed to pay for rent which keeps accruing thereby causing the defendant to suffer great inconvenience and financial injury.



48. The hearing of this case proceeded on 19/12/2023. The plaintiff who testified as PW 1 produced his witness statement dated 17/3/2017 as his evidence in chief.
49. The plaintiff stated in his witness statement that vide the unsigned and unregistered "letter of offer of a lease" dated 11th March 2005 the plaintiff herein was voluntarily given possession of the office space situated on the 4th floor of Coffee Plaza Building being land reference number 209/6545 within Nairobi, by the 1st Defendant herein, to operate his law firm i.e. to say the law firm of O. P. Ngoge & Associates.
50. That it was a mandatory term of the said unsigned letter of offer of a lease [which was neither signed by the 1st Defendant nor by the 1st Defendants authorized Estate Agents; Bageine Karanja Mbuu] that the Tenancy would be subject to a duly registered formal lease instrument which was to be prepared and granted by the landlords Advocates [the 3rd Defendant herein] and to be executed by both parties; the 1st Defendant and the plaintiff in their capacity as the Landlord and Tenant respectively.
51. That furthermore, according to the said "letter of offer of a lease" the Tenant [plaintiff] was required to deposit with the landlord the sum of Kenya shillings Ten thousands [ksh.10,000/= being legal fees for onward transmission to the landlords Advocates upon executing the said letter of offer of a lease and in turn the landlords Advocates was required to prepare grant and Register a formal lease before giving the tenant [plaintiff] possession of the said office space situated on the 4th floor of Coffee Plaza Building.
52. That alternatively, according to the said letter of offer of a lease dated 11th March 2005 the Tenant was required to pay legal costs and stamp duty arising out of the preparation granting and Registration of the formal lease document by the landlords Advocates [3rd defendant herein] before the Tenant could be given possession of the said office space.
53. That despite the plaintiff performing his obligations in full as a Tenant [by depositing the legal fees and the amount required by the landlord, through the landlords said estate Agents Bageine Karanja Mbuu Limited, for onward transmission to the landlords Advocates herein [The 3rd defendant herein] as stipulated in the said "letter of offer of a lease and this being the basis upon which the Tenant [plaintiff] was voluntarily given possession of the said office by the 1st Defendant herein, the landlord and its Advocates on record [the 3rd defendant herein] over the years, persistently and deliberately failed and/or refused to prepare grant and Register a valid Tenancy Agreement duly executed by the parties and thereby confusing the Tenancy miring it into this legal dispute and flagrantly subverting the mandatory stipulations of the said letter of offer of a lease dated 11th March 2005 to the detriment of the plaintiff.
54. THAT at the hearing hereof the plaintiff shall contend that the absence of a valid Tenancy Agreement left a lacunae and gaps in the Tenancy which in turn gave the Defendants herein a leeway and unlawful dominance, discretion and opportunistic advantages to unilaterally fix and levy rent, service charges and Value Added Taxes which were realistically not contemplated upon by the Tenant [plaintiff] or agreed upon by the Tenant [plaintiff] who had already been voluntarily given possession of the said office space by the 1st defendant.
55. That the plaintiff further states that whenever the plaintiff refused or failed to pay such imposed rent, service charges and Value Added Taxes the landlord and the defendants herein would instruct Auctioneers to intimidate, embarrass, humiliate, torture and harass the tenant [plaintiff] with proclamations attaching the plaintiffs law firm and thereby unlawfully and arbitrarily denying the plaintiff [tenant] and his clients quite enjoyment of possession of the said office space apart from subjecting the plaintiff to discrimination, psychological and mental torture, unlawful treatment, cruelty and selective application of the law in flagrant contravention of Articles 10, 19, 20, 21, 22, 27,



28, 29, 31, 40,43, 47 and 48 of the constitution of Kenya as read with Articles 14, 16 to 21 of the United Nations Basic Principles on the Role of Lawyers and thereby fomenting a serious legal Dispute which has now snow - balled into the current legal standoff.

56. That it is important to note, in this regard that ,on the 15th day of March 2011, between 4.00 pm and 6.30 pm, Integra Auctioneers [acting pursuant to instructions given to them by the Defendant herein] violently invaded the plaintiffs law firm, in the company of Armed Youths, under the color of levying Distress for Rent and illegally proclaimed, attached , removed and carted- away the plaintiffs tools of trade apart from accessing, mutilating, littering, scattering and destroying the plaintiffs clients confidential files [despite the fact that there is no valid Tenancy Agreement] and thereby effectively winding up or crippling the plaintiffs legal practice.
57. That the unlawful Auctioning or winding -up of the plaintiffs law firm by Integra Auctioneers, as aforesaid, has destroyed and damaged the plaintiffs reputation as a lawyer apart from predisposing the plaintiff to complaints by clients who were negatively affected by the said unlawful invasion or raid and Auction and disorganization of the plaintiffs legal practice arising from the said illegal distress for rent.
58. That the said illegal invasion and Auction or illegal winding-up of the plaintiffs law firm by the Defendants through Integra Auctioneers [as clinically executed under the colour of levying illegal distress for rent and taxes] has subjected the plaintiff to mental and psychological torture, has subjected the plaintiff to unlawful degrading and cruel treatment, has subverted the plaintiffs Socio - Economic Rights as well as the plaintiffs civil and Political Rights, has uprooted the plaintiff from effective legal practice, is contrary to The United Nations Basic principles on the Role of Lawyers and the same lacks moral and legal underpinnings both under the National laws and under the International Human Rights Treaties and Norms which Kenya has ratified meriting intervention by the Honourable Court.
59. That while reiterating the averments and prayers contained in the Amended plaint filed herewith, the plaintiff shall at the hearing hereof contend that the aforesaid conduct of the Defendants amounts to impunity and subverts our National values as enshrined under Article 10 of the constitution plus the alleged fundamental human rights of the plaintiff and his clients considering that the Defendants are to wholly blame for refusing to prepare, grant and registrar a valid Tenancy Agreement specifying the rent and taxes payable to the defendants.
60. That by reason of matters aforesaid the plaintiffs submits that the aforesaid conduct of the Defendants calls for accountability in the form of award of damages jointly and severally as against the Defendants.
61. That the plaintiff proposes that the plaintiff should be awarded Kenya shillings 900 Billion in damages to be enforced jointly and severally as against the defendants above - named.
62. The plaintiff produced several bundles of documents dated 17/3/2017, 30/3/2017, 20/8/2018, 6/9/2018 and 8/11/2023 as his exhibits.
63. In cross-examination the plaintiff said in the year 2006, he rendered services to the client but the client disputed retainer.
64. The plaintiff said the premises were leased to him by someone by name Njakau. He said there was a letter of offer but no tenancy agreement.
65. The plaintiff further said that the defendants auctioned his office yet there was no lease agreement. He denied that he was in rent arrears.
66. He said as a result of the attachment of his office he suffered damage beyond repair.



67. The defendant did not call any witnesses. The defendant's counsel sought adjournment to call witnesses but the same was declined on the ground that the court had told the parties that a no-adjournment policy has been adopted in old matters.
68. The parties filed written submissions as follows; the plaintiff submitted that the defendants did not avail themselves in court for their defence and counterclaim to be cross examined by the plaintiff and by doing so they are deemed to have withdrawn their case.
69. The plaintiff argued that the defendants did not sign or attest to the letter of offer dated 11/3/2005 and therefore did not meet the requirement of section 3(3) of the *Law of contract act*. However, in the likely event that the court finds the said letter of offer was a binding contract, the defendants breached the same by refusing to prepare and grant the intended lease agreement to be attested to and to be executed by the parties in order to govern the subject tenancy despite clearly admitting having received a legal fee of Kshs. 10,000 from the plaintiff.
70. The plaintiff submitted further that the defendant's legal right to levy distress upon the plaintiff's law firm did not accrue to the defendants before preparing and granting the said lease agreement. That additionally the rent arrears are mere allegations as no evidence was produced to prove the same.
71. The defendants alternatively submitted that it is not disputed that there existed a letter of offer dated 11/3/2005 between the plaintiff and the 1st defendant. The plaintiff Peter Odiwouor Ngoge and George Ouma entered into an agreement with the 1st defendant vide the said letter of offer with an understanding that both the plaintiff and the George Ouma would take possession of the premises in consideration of payment of rent. There was thus no doubt that there was an apparent intention and willingness by the 1st defendant to offer the premises to the plaintiff and George. The plaintiff and the said George Ouma proceeded to accept the terms when they both executed the offer letter.
72. The defendant further submitted that plaintiff and the said George Ouma were to make a payment of legal fees and three months rent and service charge deposits which amounted to Kshs. 75,670 payment which was made prior to them taking vacant possession of the premises. The plaintiff cannot escape the terms of the agreement as contained in the letter of offer as he paid the initial rent and continued with the occupation of the premise. The lapse of the period of the intended lease was 31/3/2011 and thereafter the plaintiff became a periodic tenant as he continued his occupation of the demised premises and was required to pay his rent on a monthly basis.
73. It was the defendant's submission that the agreement was in both the names of the Plaintiff and George Ouma and therefore a joint tenancy. However, by George Ouma leaving the premises, tenancy still existed between the plaintiff and the 1st defendant and it was expected that the plaintiff would pay the rent for the whole premise. During his testimony the plaintiff admitted that he has not been paying some rent but did not produce any evidence as proof of the same. There is thus no doubt that the plaintiff has failed to remit arrears that have cumulated to a colossal amount of Kshs. 154,450.84 as per the statement for the period of 14/10/2010 to 12/1/2011.
74. The defendant further submitted that it follows that the 1st defendant accrued the right to distress any goods in the leased premises as provided under section 3 (1) of the *Distress for Rent Act*. The plaintiff was issued with a proclamation notice dated 25/2/2011 and was given the statutory notice of 14 days as provided under law so as to make good his rent arrears. The Plaintiff failed to make good his rent arrears which entitled the 1st Defendant through themselves, agents or servants to levy distress for rent arrears on the Plaintiff's goods or chattels.



75. The defendants submitted that even if they did not call any witnesses the plaintiff was under a duty to prove his case to the required standard. The plaintiff did not discharge the burden of proof as required by the law and further admitted to having signed the letter of offer, taken possession of the premises and failed to pay rent.
76. It is the duty of the plaintiff to prove his case to the required standard in civil cases that is on a balance of probabilities.
77. The issues for determination in this case are as follows;
- i. Whether the plaintiff has proved his case against the defendants to the required standard.
 - ii. Whether the defendants proved their counter claim against the plaintiff.
 - iii. Whether the plaintiff is entitled to the remedies he is seeking against the defendants.
 - iv. Who pays the costs of this suit?
78. On the issue as to whether the plaintiff has proved his case against the defendants, I find that the plaintiff did not adduce evidence that he paid rent for the premises.
79. In the case of *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the Court stated as follows;
- “It is therefore, settled law that in civil cases, a party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. The party must present to the court all the evidence reasonably available on a litigated factual issue.”
80. The defendants were entitled to levy distress in the circumstances of the case.
81. The plaintiff stated in his submissions that defendant’s legal right to levy distress upon the plaintiff’s law firm did not accrue to the defendants before preparing and granting a lease agreement. That additionally the rent arrears are mere allegations as no evidence was produced to prove the same.
82. The plaintiff further contended that the absence of a valid Tenancy Agreement left a lacunae and gaps in the Tenancy which in turn gave the Defendants herein a leeway and unlawful dominance, discretion and opportunistic advantages to unilaterally fix and levy rent, service charges and Value Added Taxes which were realistically not contemplated upon by the Tenant [plaintiff] or agreed upon by the Tenant [plaintiff] who had already been voluntarily given possession of the said office space by the 1st defendant.
83. I find that the Plaintiff has failed to prove that he was remitting his rent and that the 1st Defendant were not entitled to levy distress for rent arrears either by themselves, or through their agents or servants on the Plaintiff’s goods or chattels.
84. It was the duty of the plaintiff to prove that the distress was illegal and the fact that there was another tenant sharing the premises did not exempt him from remitting his part of the rent payable.
85. The plaintiff admitted that he had been voluntarily granted possession of the premises by the 1st defendant and he was therefore duty bound to pay rent.



86. Section 3(1) of the *Distress for Rent Act* states as follows:

“3(1) Subject to the provisions of this Act, any person having any 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.”(emphasis added)

87. In the case of *C.Y.O Owayo v George Hannington Zephania Adudat/A Aduda Auctioneers & another* [2007] eKLR the court held as follows with regard to what constitutes an illegal distress;

“Thus, in looking into what constitutes illegality of distress for rent, we must not only consider our laws, but must also consider what in England would be considered an illegality in the levy of distress. In Halsbury’s Laws of England, 4th Edition Volume 13 paragraph 368 it is stated:

“ 368. Circumstance in which distress is illegal

“An illegal distress is one which is wrongful at the very outset, that is to say either where there was no right to distrain or where a wrongful act was committed at the beginning of the levy invalidating all subsequent proceedings.

The following are instances of illegal distress; a distress by a landlord after he has parted with his reversion; a distress by a person in whom the reversion is not vested; a distress when no rent is in arrear; or for a claim or debt which is not rent; as a payment for the hire of chartels; a distress made after a valid tender of rent has been made; a second distress for the same rent; a distress off the premises or on the highway; a distress in the night that is between sunset and sunrise a distress levied or proceeded with contrary to the law of Distress.....”

88. I find that the plaintiff has not proved his case to the required standard in Civil cases.

89. On the issue of general damages and aggravated damages, I find that this claim is based on contract and the same are not payable even if the plaintiff proved that there was breach of contract.

90. In *Dharamshi v Karsan* [1974] EA 41, it was held that general damages are not awardable for breach of contract in addition to the quantified damages as it would amount to a duplication. Further in *Securicor Courier (K) Ltd v Benson David Onyango & another* [2008] eKLR, the Court of Appeal reiterated that general damages are not awardable for breach of contract

91. On the prayer for damaged reputation, I find that there is evidence that the levying distress for rent was lawful since the plaintiff did not prove that he was not in rent arrears.

92. There is evidence that the plaintiff is still in the premises to date.

93. On the issue as to whether the defendants proved their counterclaim, I find that the answer is in the negative since no witnesses were called for the defence case.

94. The counter claim is dismissed for want of evidence with no orders as to costs.



- 95. On the issue as to whether the plaintiff is entitled to the remedies he is seeking, I find that the plaintiff did not prove his case to the required standard and he is not entitled to the remedies he is seeking against the defendants.
- 96. I dismiss the plaintiff's case with no orders as to costs.
- 97. In a nutshell, both the plaintiff's suit and the defendants' counterclaim are dismissed for want of evidence with no orders as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF OCTOBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

-for the Plaintiff
-for the 1st Defendant
-for the 2nd Defendant
-for the 3rd Defendant

