



Blend Bar & Restaurant Ltd v Ntima Housing Co-operative Society Ltd (Civil Appeal E004 of 2021) [2022] KEHC 10928 (KLR) (23 June 2022) (Judgment)

Neutral citation: [2022] KEHC 10928 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E004 OF 2021
TW CHERERE, J
JUNE 23, 2022**

BETWEEN

BLEND BAR & RESTAURANT LTD APPELLANT

AND

NTIMA HOUSING CO-OPERATIVE SOCIETY LTD RESPONDENT

(Being an Appeal from Ruling and Order in Meru CMCC No. 221 of 2020 by Hon. L.N.Juma (SRM) on 10th December, 2020)

JUDGMENT

Background

1. By a plaint dated 08.09.2020 filed on 09.09.2020, Appellant pleaded that he had leased the Respondent's premises on LR. No. Ntima/igoki/1790 for the period 01.07.2017 to 01.07.2017 but had fallen in arrears of rent since March, 2020 as a result of which Respondent distrained its goods sometimes on 29.08.2020. As a result, Appellant sought orders for release of the distrained goods.
2. Simultaneously with the Plaint, Petitioner filed the notice of motion dated 08.09.2020 seeking orders for reopening of the business premises and return of the distrained goods.
3. Respondent opposed the application mainly on two grounds. Firstly, that the suit offends Order 4 rule 1 (4) and Order 9 Rule 2 (c) of the *Civil Procedure Rules* for the reason that Appellant had not filed the resolution of the Company authorizing the filing of the suit and secondly that Appellant was indebted to the Respondent and Respondent had lawfully distrained for rent. Respondent
4. The learned trial magistrate after hearing both parties by a ruling dated 10th December, 2020 dismissed the Preliminary Objection on the ground that the filing of Company Resolution was a procedural technicality that did not affect the substance of the suit. And finding as conceded by Appellant that Appellant was in arrears, the court ordered that the arrears be paid within 30 days subsequent to which



the leased premises would be reopened and distrained goods released and in default the Respondent be at liberty to issue fresh notices for distress for rent.

5. Appellant was aggrieved by the order that arrears be paid within 30 days subsequent to which the leased premises would be reopened and distrained goods released and has filed this appeal mainly on the ground that the distress was unlawful.

Analysis and Determination

6. I have considered the appeal in the light of the record of the trial court and submissions filed before the trial court on behalf of the parties.
7. As rightly observed by the learned trial magistrate in her ruling, the issue before the court was whether an order of injunction could be issued to restrain the Respondent landlord from distraining for rent when Appellant tenant had conceded being in arrears.
8. In dismissing the Appellant's application, the learned trial magistrate relied on the case of *Julius Mogaka Gekonde t/an E-Smart Technical College vs. Ouru Power Limited & another* (2016) eKLR where it was held inter alia that a party in arrears cannot obtain an order of injunction to restrain the landlord from exercising his rights to levy distress for rent arrears due.
9. Consequently, I find that the learned trial magistrate's finding that the Appellant was in arrears and could not obtain an injunction against the Respondent landlord was well founded and grounded in law and cannot be faulted.
10. In the end, I find that this appeal has no merit and it is dismissed with costs to the Respondent.

DATED AT MERU THIS 23RD DAY OF JUNE 2022

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant - Ms. Kaume for M.G.Kaume & Co. Advocates

Respondent - Mr. Muthomi for John Muthomi & Co. Advocates

