

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CORAM: D. S. MAJANJA J.

CIVIL SUIT NO. 9 OF 2018

BETWEEN

BETHWEL M. NYANDIGISI.....PLAINTIFF

AND

DATABEL INTERNATIONAL LTD.....DEFENDANT

JUDGMENT

The plaintiff is the landlord and owner of the premises known as **KISII TOWN/BLOCK III/134** which comprises shops. One of the shops on the 2nd floor was leased to the defendant for the sum of Kshs. 12,000/= per month. According to the plaintiff, the defendant persistently failed to pay rent causing him to issue a notice of termination of the lease dated 26th January 2018 to take effect on 1st June 2018. As the premises were controlled under the *Landlord and Tenant (Shops Hotels and Catering Establishments Act (Chapter 301 of the Laws of Kenya)*, the defendant failed to file a reference to the Business Premises Rent Tribunal (“BPRT”). The plaintiff produced a letter from the BPRT dated 23rd April 2018 confirming that a reference or objection had not been filed by the tenant. The plaintiff also claimed that the defendant had failed to pay Kshs. 161,000/- outstanding rent as at the date of termination.

When this suit was filed and the plaint and summons served on the defendant, it failed to file its defence. Despite service of the hearing notice of the formal proof today, neither the defendant nor its agents attended court. The totality of the material before me is that the plaintiff’s claim is not contested and his evidence uncontroverted.

I therefore enter judgment for the plaintiff against the defendant as follows:

- (1) The defendant be and is hereby directed to vacate and deliver up the premises being the shop on 2nd floor on the property known as **KISII TOWN/BLOCK III/134** within **fourteen (14) days** from service of the decree herein and in default the plaintiff be at liberty to proceed with eviction.
- (2) Judgment be and is hereby entered for the plaintiff against the defendant for Kshs. 161,000/=.
- (3) The plaintiff is awarded costs of this suit assessed at Kshs. 30,000/= inclusive of filing fees.
- (4) Interest on (2) and (3) above shall accrue at court rates from the date hereof.

DATED and DELIVERED at KISII this 18th day of March 2019.

D.S MAJANJA

JUDGE

Mr. K. Onyancha instructed by Koina Onyancha and Company Advocates for the Plaintiff.