



Anupi Fashions Limited v Mwea Rice Mills Limited & 2 others (Environment and Land Case 17 of 2020) [2025] KEELC 6066 (KLR) (17 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6066 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 17 OF 2020
LN MBUGUA, J
SEPTEMBER 17, 2025**

BETWEEN

ANUPI FASHIONS LIMITED PLAINTIFF

AND

MWEA RICE MILLS LIMITED 1ST DEFENDANT

MURAGE ESTATE AGENTS 2ND DEFENDANT

JEREMIAH KIARIE MUCHEGU T/A ICON AUCTIONEERS . 3RD DEFENDANT

JUDGMENT

1. Vide a plaint dated 27.1.2020 and amended on 23.6.2022, the plaintiff sued the defendants claiming that the 1st defendant is the registered proprietor of Leader House located in parcel LR. No. 209/590 (the suit premises). That from June 1997 to 24.1.2020, the plaintiff was a controlled tenant of the 1st defendant at Leader House, Shop A which was managed by the 2nd defendant. That the plaintiff complied with all obligations under the lease, until 1.10.2019 when the 2nd defendant, under the 1st defendant's instructions obtained a Landlord's Notice to terminate the tenancy on grounds that it wished to reconstruct the suit premises.
2. That upon service of the notice, the plaintiff filed the case BPRT Case No.1047/2019: Anupi Fashions Limited v Mwea Rice Mills Ltd opposing the notice. However, on 24.1.2020, the defendants went ahead to unlawfully distress for rent arrears of an alleged sum of Ksh. 660,000/= without leave from the Business Rent Premises Tribunal. That no inventory was carried out by the 3rd defendant, thus it is impossible to ascertain if any of its goods were stolen/damaged during removal. Further on 24.1.2020, the plaintiff was illegally and unlawfully evicted by the 1st and 2nd defendants and as a consequence, it suffered losses.
3. The plaintiff therefore seeks the following orders;



- a. General damages for trespass, unlawful distress for rent, and unlawful eviction.
 - b. Aggravated damages.
 - c. Exemplary damages.
 - d. Special damages of ksh.1,108,227.80.
 - e. Interest on (a) (b) (c) and (d) above at court rates from 24.1.2020 until payment in full;
 - f. Costs and interest thereon at court rates from the date of judgment until payment in full.
4. The suit is opposed by the defendants vide their joint statement of defence dated 20.8.2020 and amended on 20.7.2022. They deny allegations levelled against them in the plaint, but admit that the landlord exercised its right to re-enter the premises and levy distress for rent arrears after the plaintiff ignored to pay new rent of Ksh. 335,000/= per month with effect from 24.9.2019, but instead continued to pay the old rent of Ksh. 53,038.
 5. The defendants also stated that the plaintiff surrendered the premises back to the landlord upon the land lord's exercise of its right of re-entry on default of rent payment, and that the proclaimed goods were all moved to the plaintiff's warehouse in the presence of its representatives and as a result, no goods were stolen/damaged.
 6. They also contend that no leave was required from the BPRT before levying distress for rent against the plaintiff.
 7. Plaintiff's case was advanced by its director, one Kiran Shah. He adopted his witness statement dated 5.10.2022 as his evidence. He produced the 20 documents in their list dated 27.1.2020 as plaintiff exhibit 1-20, 3 documents in a further supplementary list dated 9.4.2022 as plaintiff exhibits 21-23, and 38 documents in a list dated 5.10. 2022 as plaintiff exhibits 24-61.
 8. In his witness statement, Pw1 stated that pursuant to an agreement made on 7.7.1997, the 1st defendant leased the suit premises to the plaintiff at a monthly rent of Ksh 20 900, of which theirs was a controlled tenancy. That the plaintiff diligently paid the agreed rent through the appointed agencies of the 1st defendant.
 9. On 1.10.2019, the 2nd defendant under the instructions of the 1st defendant issued a notice to terminate or alter the terms of the tenancy under the Land Lord and Tenants (Shops Hotels and Catering Establishment Act Cap 30) laws of Kenya on the grounds that the 1st defendant wished to re-construct the premises which could not be done without taking possession of the premises.
 10. This prompted the plaintiff to file BPRT case No. 1047 OF 2019 at the Business Tribunal on 25.10.2019, (herein after the tribunal case) opposing the termination notice. That since the plaintiff had been conducting business for a period of over 22 years, he proposed to have the lease extended at a monthly rent of Ksh 150 000 and he also offered to withdraw the tribunal case. There was however no communication from the 1st defendant.
 11. On the morning of 24.1.2020, people apparently working for the 3rd defendant showed up with a proclamation notice indicating rent arrears as Sh 660 000 and auctioneers fees of Sh 150 000, they also had a letter dated 28.10.2019 where the 2nd defendant was instructing the 3rd defendant to levy distress for rent of sh.660 000. The plaintiff was then evicted and his goods were taken to a safe house.
 12. The plaintiff then obtained copies of proceedings in the case NRB CM MISC APP NO. 2 of 2020, Jeremiah Kiarie Muchendu t/a Icon Auctioneers & Murage Estate Agents v Anupi Fashions Limited



- & Scottway Limited (hereinafter, the miscellaneous suit) and realized that he had not been served with the suit documents. He was shown the court order on 24.1.2020.
13. Pw1 denies that there was an agreement with terms of a new lease where rent was pegged at sh. 355 000 per month. He terms the levying of the distress and the eviction as unlawful and he also denies having been in any rent arrears. He avers that the actions of the defendants have occasioned it immense damage tabulated at paragraph 40 of the witness statement of Pw1 at sh. 1, 108 227.
 14. On cross examination by counsel for the defendants, Pw1 stated that he is seeking general damages for Sh. 1 108 227 for forcefully being removed from the suit premises, but he continued using his furniture. He averred that at the time of the eviction, he was shown the court order authorizing the auctioneers to break in and recover rent but he refused them to implement the court order. That the auctioneers were with the police and they started removing clothes and everything, so pw1 admitted to pay Sh 660 000 and Sh 45 000 and they agreed with the auctioneers that the goods be moved to central clothing limited store owned by his business partner. The goods were moved in his presence. Pw1 stated that they moved their business to a new place, about 200 meters from the suit property.
 15. Pw1 also stated that the tribunal case is pending, but the case did not go through as they were evicted.
 16. In reexamination, Pw1 stated that they paid sh. 660 000 to enable them to continue with the business and not because they were in rent arrears, adding that there was no rent dispute. He also stated that even as the Hearing in the BPRT case was scheduled for hearing on 20.2.2020, the auctioneers came before the hearing on 24.1.2020.
 17. The case for the defendants was advanced by the director of the 2nd defendant, one Daniel Muchiri (DW1). He adopted his witness dated 20.8.2020 as his evidence, He also produced the 3 documents in their list dated 20.8.2020 as his exhibits 1-3 while item 4 was marked for identification.
 18. The testimony of Dw1 is that he was an appointed property manager for Leaders House as from 5.9.2019, and that previously, the Land lord was receiving rent directly. That rent was increased with effect from 24.9.2019 at sh. 355 000 per month, but the plaintiff refused to execute the letter of offer dated 16.9.2019, instead, the plaintiff continued to pay the rent of sh. 53 058 which was not commensurate with the market value. They wrote the letter of 5.11.2019 to the plaintiff giving a notification of the rent arrears, and instead of paying the rent, the plaintiff gave a counter offer of sh. 150 000 which was unacceptable to the Landlord. This prompted the Landlord to levy for distress for rent in January 2020.
 19. Dw1 further stated that when the auctioneers arrived at the suit premises, the plaintiff surrendered the same, thus there was no forceful eviction. He argues that the reference at the tribunal did not waive the Landlord's right to recover rent. Thus the claim for damages is unwarranted.
 20. In cross examination, Dw1 re-stated that the 2nd defendant was appointed on 5.9.2019, and they accepted to be agents on 16.9.2019, by then the monthly rent was sh. 53 058. However, rent was increased to sh. 355 000, but the plaintiff declined to sign the offer letter, adding that their letter of 1.10.2019 acted as the notice. He is aware that once the reference was filed, the notice was not applicable. The defendants went ahead and issued another letter of 5.11.2019.
 21. Dw1 stated that the notice they gave under Land Lord and Tenant Act was on grounds of "major renovations". Of which, the plaintiff challenged the same at the BPRT.
 22. On 25.1.2024 after the closure of defence case, the court gave directions on the filing of submissions as follows; "The plaintiff to file and serve submissions by 9.2.2024. The defendants to file and serve submissions by 23.2.2024. Mention on 15.4.2024".



23. None of the parties turned up in court on 15.4.2024. Thereafter, the court was to give a ruling dated 26.9.2024, in which the court stayed the proceedings herein awaiting the determination of the BPRT case. The plaintiff then made an application dated 6.11.2024 seeking a review of the ruling of 26.9.2024 for the court to deliver a judgment in the matter, of which the said application was allowed vide a ruling dated 26.3.2025. The import of that ruling was that the orders given on 25.1.2024 remained in force. However, a perusal of the digital file in the Court Tracking System (CTS) reveals that the submissions of the plaintiff were filed on 25.3.2024 long after the given timelines. What more, there is no evidence of service of the same. In that regard, the submissions of the plaintiff are hereby disregarded. It is noted that the defendants did not file submissions.

Determination

24. There is no controversy that the 1st defendant was the registered proprietor of the premises identified as Leader House L.R NO. 209/590 and that the plaintiff was a tenant of the 1st defendant in respect of the suit premises SHOP A located at leader House. Further, it is admitted by both parties that the 1st defendant issued a notice to terminate the tenancy on 1.10.2019, prompting the plaintiff to file a suit at the Business Premises Tribunal Case no BPRT 1047 of 2019.
25. Apparently, the Land Lord through the 2nd and 3rd defendants levied distress against the plaintiff by filing a miscellaneous case before the Magistrates court in Nairobi, Milimani CM Misc. Application no 2 of 2020. The plaintiff avers that it was forcefully evicted and terms both the distress for rent and the ensuing eviction as illegal, hence the prayer for damages for trespass, aggravated, exemplary as well as special damages. On the other hand, the defendants contend that they followed the law by filing the case at the magistrates court despite the ongoing case at the tribunal.
26. With this kind of background, I pose the question, what is the nature of the proceedings in this suit?.
27. In *Machani v Ombui & 2 others* (Application 2 of 2015) [2015] KESC 33 (KLR) (3 December 2015) (Ruling), the Supreme Court of Kenya stated that disputes should be determined before a court through the established principle, and to the design of the judicial system.
28. In *Kenya Hotel Properties Limited v Attorney General & 5 others* (Civil Appeal 404 of 2018) [2020] KECA 427 (KLR) (7 August 2020) (Judgment), (a decision upheld by the Supreme Court of Kenya), the Court of Appeal while discussing the hierarchical systems of the Court in which the High court had been called upon to annul the decision of the Court of Appeal stated thus;
- “It’s latest rising is the most baffling of all because the petition filed before the High Court sought strange prayers in that the court there was being asked to annul, strike out, reverse or rescind a judgment of this court, its elder sibling. In a system of law that is hierarchical in order, such as ours is, it seems to us that such a thing is quite plainly unheard of and for reasons far greater than sibling rivalry...”
29. In *Ngoge v Kaparo & 5 others* (Petition 2 of 2012) [2012] KESC 7 (KLR) (4 September 2012) (Ruling), the Supreme Court of Kenya stated that “it ought to safeguard the autonomous exercise of the respective jurisdictions of the other courts and tribunals”. The court went further to state that;
- “In the instant case, it will be perverse for this court to assume a jurisdiction which, by law, is reposed in the Court of Appeal, and which that court has duly exercised and exhausted.
30. In the interpretation of any law touching on the Supreme Court’s appellate jurisdiction, the guiding principle is to be that the chain of courts in the constitutional set-up, running up to the Court of Appeal, have the professional competence, and proper safety designs, to



resolve all matters turning on the technical complexity of the law; and only cardinal issues of law or of jurisprudential moment, will deserve the further input of the Supreme Court”.
Emphasize added.

30. In the case at hand, the applicant is primarily seeking damages on the basis that the levying of distress for rent and the apparent subsequent eviction were illegal. Going by the contents of paragraph 22 in the witness statement of PW1, the plaintiff is also challenging the Notice to Terminate/Alter the Tenancy Agreement.
31. However, it is quite apparent that the levying of distress was a court sanctioned process in the case CM Misc. application no. 2 of 2020, of which the plaintiff has availed the relevant order at page 192 of his trial bundle.
32. At paragraph 27 of his witness statement, Pw1 averred that they were not served with the court documents in the miscellaneous suit. However in cross examination, Pw1 stated that;

“In my statement I say that the auctioneers came and evicted me forcefully and they showed me a court order that same day and not before. The order was for eviction”.
33. Pw1 went further to state that ;

“The auctioneers had an order to break in and recover rent, so it was not an eviction”
34. Plaintiff was apparently evicted on 24.1.2020. It is therefore clear that the plaintiff was aware of the proceedings before the magistrates court as at the time it was filing this suit 4 days later on 28.1.2020. The plaintiff is in essence challenging the entire process in which the process of levying of distress for rent was conducted. That being the case, it follows that the validity of those proceedings can only be challenged through the hierarchical appellate system of the courts or by invoking the supervisory or review jurisdiction of the courts.
35. The legal frame work governing matters relating to distress for rent falls under the *[Distress for Rent Act](#)*, See - Omondi v Kassam & another (Civil Appeal E018 of 2024) [2024] KEHC 10703 (KLR) (11 September 2024) (Judgment) Neutral citation: [2024] KEHC 10703 (KLR).
36. This far, it becomes apparent that the court cannot delve into the claim of damages unless and until there is a finding made to the effect that the distress for rent levied against the plaintiff was unlawful, of which such a finding can only be made by challenging the proceedings before the magistrates court. It is worthy to note that in its current pleadings, the plaintiff has not lodged a prayer that the distress for rent proceedings be declared as illegal/unlawful.
37. On the Notice to Terminate the Tenancy the plaintiff cannot challenge the same before this court as it already filed the tribunal case No. 1047 of 2019. Thus the court cannot make any pronouncement on the validity of the aforementioned Notice when the matter is before a competent tribunal.
38. In the end, I find that the plaintiff has not followed the right procedure in seeking redress for the alleged wrongful distress for rent and subsequent eviction. In the circumstance, I find that this suit is not merited, the same is hereby dismissed with costs to the defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17th DAY OF SEPTEMBER, 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE



In the presence of:-

Janice Kendi, CA

