



REPUBLIC OF KENYA



**Kamau & another v Chetambe t/a Seventh Avenue Medical Centre (Civil Case E021 of 2025) [2026] KEHC 410 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 410 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL CASE E021 OF 2025  
FN MUCHEMI, J  
JANUARY 22, 2026**

**BETWEEN**

**GEORGE NGAREGA KAMAU ..... 1<sup>ST</sup> PLAINTIFF**

**ADRIS PROPERTIES CONSULTANTS LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ISAAC CHESONI CHETAMBE T/A SEVENTH AVENUE MEDICAL  
CENTRE ..... DEFENDANT**

**RULING**

1. The application dated 9<sup>th</sup> October 2024 seeks for orders of depositing with the applicants the sum of Kshs. 702,500/- being the outstanding rent from September 2023 to October 2024 which rent the respondent has failed, refused or ignored to clear pending the hearing and determination of the suit.
2. In opposition to the application, the respondent filed a Replied affidavit dated 26<sup>th</sup> November 2024.

**Plaintiffs'/Applicants' Case**

3. The applicants aver that the 1<sup>st</sup> applicant is the registered proprietor of all that piece of land known as LR. No. 8468/131 situated within Thika sub-county on which is erected a commercial building. On 27<sup>th</sup> March 2024, the 1<sup>st</sup> applicant appointed the 2<sup>nd</sup> applicant as his sole property manager of the property known as LR. No. 8468/131. In February 2023, the 1<sup>st</sup> applicant entered into a verbal tenancy agreement with the respondent to let the said suit premises at a monthly rent of Kshs. 55,000/- to be used as a medical facility. On 1<sup>st</sup> April 2024, the said tenancy agreement was reduced into writing with the 2<sup>nd</sup> applicant as the agent of the 1<sup>st</sup> applicant in which the lease agreement with the respondent agreed to lease the said premises for a term of five years and six months at a monthly rent of Kshs. 55,000/-.



4. The applicants further aver that it was an express term of the lease agreement that the respondent shall be paying rent on or before the 5<sup>th</sup> of every calendar month, and in the event of late payment, the 2<sup>nd</sup> applicant would recover a penalty of 10% per month of the outstanding rent.
5. The applicants state that the respondent is currently in rent arrears of Kshs. 702,500/- being the outstanding rent from September 2023 to October 2024 which rent he has failed, refused and/or ignored to pay in clear contravention of the lease agreement.
6. The applicants further state that despite the orders issued on 28<sup>th</sup> August 2024 in Misc. Application No. E117 of 2024 against the respondent requiring the auctioneers to break into the commercial premises built on land parcel number 8468/131 and remove all the goods distrainable therein for the purposes of auctioning them to recover the then outstanding rent arrears of Kshs. 520,000/-, there was nothing in the said premises to recover the said rent arrears and the respondent remains unabated without paying the reserved rent to their detriment.
7. The applicants state that they have on numerous occasions prevailed upon the respondent to vacate the suit premises but he has always ignored them clearly exhibiting arrogance and disregard for the law. Further, the respondent has resulted to using the police to harass and intimidate them and their agents to let go of their rights over their premises yet the dispute is a civil matter.
8. The applicants argue that the respondent has continued unabated in committing acts of trespass on their premises and even constructed temporary structures therein. The respondent's actions are aimed at occasioning a breach of peace and they have exercised great restraint to uphold the peace.
9. The applicants state that they stand to suffer imminent loss and damage which may be irrecoverable or irreplaceable unless the court intervenes.

#### **The Defendant/Respondent's Case**

10. The respondent states that the 1<sup>st</sup> applicant has been his landlord in the suit premises whereas the 2<sup>nd</sup> applicant came in much later as an agent of the 1<sup>st</sup> applicant for purposes of collecting rent of the suit premises.
11. The respondent states that since the 2<sup>nd</sup> applicant took over the management of the suit premises, acting through one Lucy Matu, they have been hell bent to frustrate his services which conduct has resulted to him losing business. The said Lucy Matu has openly harassed the staff and patients and physically and forcefully confronted him. Further, the said Lucy Matu has been exaggerating the rent arrears and misleading everybody including the courts of law in an attempt to extort money from him.
12. The respondent argues that the applicants have refused to abide by their contractual obligations under the tenancy and he has suffered irreparable losses and damage and thus seeks specific performance of the applicants' contractual obligations. The respondent further argues that the applicants' auctioneers trading as Kentrack Auctioneers served him with wrong suit papers for SCCOMM Case No. E1989 of 2023 in a move to deny him justice. Despite being directed by the court to serve him, the defendant states that he was not served and thus unable to respond in the suit and thus the applicants distrained his hospital goods worth over Kshs. 30 million on 10<sup>th</sup> September 2024 whereas the rent arrears were exaggerated at Kshs. 520,000/.
13. The respondent states that on 10<sup>th</sup> September 2024 when the said auctioneers went to his premises to attach his goods, the medical facility was open yet they maliciously broke into the hospital, removed the doors and carried them away. Furthermore, the respondent states that he has since lodged a complaint against the auctioneers with the Auctioneers Licensing Board for their conduct. Further,



the respondent states that later in the evening of the same day, the applicants returned with one Kelvin Mwaura and the police and stole more goods including drugs and medicines worth Kshs. 500,000/- harassed him, his patients and staff and vandalized the hospital leading him to file a criminal case with the police at Thika Police Station. The police consequently visited the scene and arrested seven persons and opened criminal proceedings against them as a result of which the applicants are claiming that he is using the police to harass and intimidate them.

14. The respondent states that the extensions on the premises were constructed in the year 2023 immediately after he rented the premises with the full consultation and consent of the 1<sup>st</sup> applicant. The 2<sup>nd</sup> applicant was at the time not in the picture as the 1<sup>st</sup> applicant had not hired their services and thus the 2<sup>nd</sup> applicant is not privy to the common understanding between them. The respondent states that the suit premises was initially a residential house and when he rented it for purposes of putting up a hospital, he and the 1<sup>st</sup> applicant agreed that he would erect temporary structures in the open spaces within the confines of the perimeter walls of the premises which he did at a cost of Kshs. 2 million.
15. The respondent argues that the orders sought in the instant application are final orders and cannot be granted at an interim stage as the same would render the suit nugatory, null and void as he intends to file a counterclaim of over Kshs. 32 million.
16. The applicants filed a Further Affidavit dated 4<sup>th</sup> February 2025 and state that the respondent is trying to prosecute or revive an already determined case in which the court ordered a break in to remove all the goods distrainable therein for purposes of auctioning them to recover the then outstanding rent of Kshs. 520,000/-. The distrained goods barely fetched the auctioneer's fees.
17. The applicants aver that at no one time did they and the respondent agree on making additional structures or erecting any new structures or making any other improvements. Further, the applicants state that the respondent has not exhibited any receipt in payment of rent and therefore he cannot be heard to say that seeking prayers requiring him to deposit the outstanding rent arrears is draconian in the circumstances.
18. Parties put in written submissions.

### **The Applicants' Submissions**

19. The applicants submit that the respondent has not exhibited any form of payment of rent and neither has he rebutted the claim as to outstanding rent. The applicants aver that as at the time of filing the current suit, the respondent was in arrears of Kshs. 702,500/- for the month of September 2023 to October 2024. The applicant argues that the respondent by failing to pay rent and remain in the suit premises has occasioned them loss and damage as their investment has been tied without any financial productivity.
20. The applicants submit that from the record, the respondent was served with the application for breaking orders and attended court on 7<sup>th</sup> July 2024 but he opted not to respond to the same. Thus he cannot attempt to revive an already determined case.
21. The applicants refer to the case of Samuel Kipkorir Ng'eno & Another vs Local Authorities Pension Trust (Registered Trustees) & Another [2013] eKLR and submit that the respondent is in breach of his fundamental duty to pay rent and as such he is not deserving of the equitable reliefs he has sought in his replying affidavit and counterclaim.
22. The applicants submit that their relationship with the respondent had become very frosty to the extent that it was extremely prejudicial to the 1<sup>st</sup> applicant's right as the owner of the suit premises. To



support their contentions, they rely on the case of *De Francesco vs Barnum* (1980) 45 Ch.D cited in *Communication Workers Union of Kenya vs Telkom (K) Ltd & 2 Others* (2006) eKLR.

### **The Respondent's Submissions**

23. The respondent submits that the applicants have not demonstrated to the court how much was realized from the sale of his goods recovered and sold by way of public auction. Thus, the respondent argues that the court should order the applicants to make a disclosure of all they attached and removed from the suit premises on 10<sup>th</sup> September 2024 and what was realized from the sale of goods in a public auction.

### **The Law.**

#### **Whether the application is merited**

24. It is not in dispute that the 1<sup>st</sup> applicant is the proprietor of LR. No. 8468/131 situated within Thika sub county. It is further not disputed that the 1<sup>st</sup> applicant entered into a tenancy agreement with the respondent vide lease agreement dated 1<sup>st</sup> April 2024 whereby the respondent agreed to lease the said premises for a term of five years and six months at a monthly rent of Kshs. 55,000/-. The rent was to be paid on or before the 5<sup>th</sup> day of every month and in the case of late payment, the 2<sup>nd</sup> applicant as the managing agents of the 1<sup>st</sup> applicant, would recover a penalty of 10% per month of the outstanding rent.
25. According to the applicants, the respondent failed and neglected to pay the rent and as it stands, the respondent owes them Kshs. 702,500/- in rent arrears. Thus, the respondent in failing to pay rent was exposed to levying of distress for rent thereby necessitating the applicants to do so by obtaining a court order in Thika CM Miscellaneous Application No. E177 of 2024 and further sought for breaking in orders and remove all the goods distrainable for the purposes of auctioning them to recover the then outstanding rent of Kshs. 520,000/-.
26. From the record, it is evident that the respondent is in rent arrears as he has not disputed the claim nor has he produced any evidence in court to show that he has been paying rent to either the agent or to the plaintiff. The only disputed issue that can be discerned from the pleadings is the amount of the rent arrears and the value of the goods that were distrained by the applicants. Further it is evident that although the applicants attached the respondent's goods for sell through a public auction, the applicants did not furnish the value of the goods and the amount realized to the respondent or to the court.
27. From the facts presented by the parties, the amount of rent owed to the applicant can only be determined by parties going through a full hearing. It is my considered view that since the amount of rent arrears is in dispute, the respondent ought not to deposit the amount of Kshs. 702,500/- claimed by the applicants. The court hereby allows this application in the following terms:-
- a. That the applicant shall deposit Ksh.500,000/= in an interest-earning account in the names of the advocates on record within a period of sixty (60) days.
  - b. That the parties shall prepare for the hearing of the case within 30 days where all necessary evidence shall be filed and hearing date taken between the parties.
  - c. That the costs of this application shall abide in the suit.
28. It is hereby so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22<sup>ND</sup> DAY OF  
JANUARY 2026.**

**F. MUCHEMI**

**JUDGE**

