



**Mutiso v Mwendu (Environment & Land Case E364 of 2022)  
[2024] KEELC 6889 (KLR) (22 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6889 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E364 OF 2022**

**JA MOGENI, J**

**OCTOBER 22, 2024**

**BETWEEN**

**ONESMUS MUTHOKA MUTISO ..... PLAINTIFF**

**AND**

**NANCY RITA MWENDE ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff has sued the defendant for payment of Kshs.2,275,000 accumulated and or accrued rent arrears. He also seeks mesne profits with effect from 1<sup>st</sup> September 2022 until delivery of vacant possession of the suit property plus interest at court rates
2. As per the plaint dated 4/11/2022, the plaintiff is the Landlord to the home dwellings situated on LR No. 209/14895 or House Number 732A located along Tebere Crescent Kileleshwa and is currently leased out to the Tenant/Defendant herein at a monthly rent of Kshs. 120,000.
3. That by a lease agreement dated 17/05/2018 the plaintiff leased out the suit property to the Defendant for a period of 4 months commencing from 1<sup>st</sup> April 2018 to 31<sup>st</sup> July 2018 at an initial rent of Kshs.95,000 payable per month and payable in advance.
4. It is the plaintiff's contention that clause 4 of the lease agreement provided that there was a right of re-entry and recovery of possession of the demised premises by the Plaintiff if and when the Defendant defaulted to pay the agreed rent under the lease agreement. Further that any extension of that lease by the defendant beyond 31/07/2018 the rent was to increase to Kshs. 120,000.
5. The plaintiff avers that the defendant on diverse months during the subsistence of the lease agreement defaulted in the payment of her rent and at September 2022 and her rent arrears totaled Kshs. 2,275,000 which is the claim of the Plaintiff.



6. That despite numerous promises made by the defendant to pay up she has continually failed to honor her word and make good her breach by paying off all her rent arrears.
7. The defendant filed a defence and counter claim dated 6/7/2023 and denied being the tenant of the plaintiff and nor being in rent arrears as claimed by the plaintiff. The defendant claimed that this Honorable Court has no jurisdiction to hear and determine this nor make any of the orders prayed for in the Plaintiff as the same is sub judice under Section 6 of the Civil Procedure Act 2010 specifically with regard to the prayers for purported rent arrears and eviction orders. The defendant contends that the suit as filed is incurably defective, bad in law, unwarranted, malafides and unmeritorious
8. The defendant further avers that the matter of rent and rent arrears being claimed by the plaintiff in this suit is the subject of an on-going suit filed before the current suit being Nairobi Rent Restriction Tribunal Case No. E536 of 2022 and orders had been given to the plaintiff in the same suit stopping the plaintiff from harassing the defendant, levying distress, charging illegal penalties, evicting or in any manner interfering with the tenant.
9. It is the defendant's averment that at all material times she was the Tenant on the suit property, as stated at paragraph 3 of the Plaintiff but that she denies that the Plaintiff was the Landlord as the owner of the suit premises since the Landlord is Mr Mwangangi and therefore the plaintiff lacks locus standi and is not duly authorized to bring this suit on behalf of the Landlord.
10. The Defendant thus contests the jurisdiction of this court by virtue of sub judice in response to paragraph 12 of the Plaintiff.

#### **Defendant's Counter Claim**

11. The Defendant reiterates the content of paragraph 1 to 29 of the defence and states that her husband and the plaintiff had discussed the issue of rent and her husband was categorical that he could not pay Kshs 120,000 monthly rent. That following the discussion it was agreed that they continue to pay Kshs.95,000
12. The defendant denies having willfully and willingly executed the purported lease agreement since the plaintiff threatened her with eviction if she did not sign the lease agreement. Thus the purported lease Agreement was signed under duress, threats, intimidation, harassment and undue influence.
13. The defendant further avers that the Plaintiff has been receiving Kshs. 95,000/= without demonstrating any problem with the said amount and or late payment penalties. The now purported rent increment of Kshs.25,000/= is therefore unconscionable, unlawful and illegal. The amount of arrears claimed is according to the defendant, not factual and the Defendant wishes to state that the said amounts are backdated, arbitrary, capricious, grossly exaggerated, misguided and frivolous and contain the contentious backdated increments and penalties.
14. The Defendant avers that charging 5% penalty per month is irregular, illegal and unlawful because the Defendant did not agree to the increment since the purported lease was signed under duress. The Defendant avers that she rented the property back in 2016 in a very dilapidated state, and as a family undertook renovations and repairs all at own cost with no consideration whatsoever or reimbursement as promised by the Plaintiff. The defendant seeks a refund of Kshs 500,000 being the cost of the said repairs.
15. The defendant claims that there is absolutely no justification for the Plaintiff to receive higher rent than the current Kshs.95,000/= that the current going rate for the houses in the neighbourhood stand



between Kshs. 80,000/= to Kshs.100,000/=. No unit goes for any amount above 100,000/= this can easily be confirmed by a simple survey of the going rates currently.

16. The defendant avers that the plaintiff's actions are illegal and unlawful and are only meant to illegally attach the Defendant which if not restrained will cause the Defendant damages and loss and untold suffering.

#### **Particulars of defendants fraud and illegality**

- a. Fraudulently proclaiming the Defendant and her family of her household goods and personal belongings;
  - b. Increasing Kshs. 25,000/= rent per month Illegally, irregularly and unlawfully;
  - c. Purporting to charge backdated rent in May 2022;
  - d. Purporting to charge 5% penalty per month backdated without the knowledge, approval and/or consent of the Defendant;
  - e. Interfering with the Defendant's peaceful possession and or occupation of the suit premises known as House No. 732A, Tebere Crescent, Kileleshwa on Land Reference Number 209/14895 culminating in constructive eviction;
  - f. Forcing, threatening, intimidating and harassing the Defendant into signing the 2018 lease Agreement;
  - g. Failing, refusing and/or neglecting to furnish the Defendant with a new lease agreement as per their agreement knowing very well the 2018 one was signed under duress;
  - h. Failing, refusing and/or neglecting to furnish the Defendant with rent payment receipts;
  - i. Failing, refusing and/or neglecting to take accounts.
17. The Defendant in her Counter Claim prays for the following reliefs
- i. That the Plaintiff's suit be dismissed with costs.
  - ii. This Honourable Court be pleased to direct that the purported lease Agreement dated 17<sup>th</sup> May, 2018 be and is hereby invalidated, cancelled and rescinded.
  - iii. This Honourable Court be pleased to issue an Order to the Plaintiff to refund to the Defendant the sum of Kshs. 500,000/= for repairs and renovations undertaken by the Defendant upon the Suit premises.
  - iv. This Honourable Court be pleased to issue an Order quashing the proclamation dated 12<sup>th</sup> May, 2022.
  - v. This Honourable Court be pleased to issue a permanent Order directing the Parties to jointly take proper accounts of rent paid to establish the proper rent accounts and to exclude the contentious 5% penalty charge per month and also to exclude the purported backdated rent increment of Kshs.25,000/= from August 2018.
  - vi. This Honourable Court be pleased to issue an Order that the 5% penalty charge every month is unconscionable, illegal, irregular & unlawful.



- vii. This Honourable Court be pleased to issue an Order that the that the purported rental increment from Kshs.95,000/= to Kshs.120,000/= is unconscionable, illegal, irregular & unlawful.
  - viii. This Honourable Court be pleased to issue a permanent injunction restraining the Plaintiff either by himself, his agents and/or servants from distressing for rent, proclaiming, attaching the goods, increasing rent, charging penalty, intermeddling and/or in any other way whatsoever interfering with the Defendant over her occupation of the suit premises known as House No. 732A, Tebere Crescent, Kileleshwa on Land Reference Number 209/14895.
  - ix. This Honourable Court be pleased to grant such other or further Orders as it may deem fit to grant in the interest of equity and justice.
  - x. That the Plaintiff do bear the costs of this Suit.
18. The plaintiff filed a reply to the defendant's statement of defence and defendant's counter-claim dated 15/07/2023 and denied all averments in the statement of defence and the counter-claim and put the defendant to strict proof thereof. It was his contention that he had locus standi to institute the instant suit since he had an agency relationship with other 3<sup>rd</sup> parties which is governed under agency law and agent-principal relationship which may or may not be disclosed.
  19. That the defendant having failed to pay rent as provided in Clause 4 of the Lease Agreement the plaintiff was entitled to enter the suit premises as clause 4 provides for repairs and renovation works.
  20. He avers that as at 23/03/2023 the Tribunal in E536 of 2022 had stood over generally the suit before it to await the outcome of this suit. Further that the plaintiff was entitled to accrued rent in line with the executed Lease Agreement dated 17/05/2018 which had not been contested by the defendant until now.
  21. The plaintiff states that he took over the suit property on 11/04/2023 and that the property has a new tenant after the defendant vacated but that he needs to be paid rent of Kshs.2,854,000 and renovation and repair charges of Kshs.403,068,000 plus costs. The plaintiff prays the counter-claim to be dismissed for being incompetent and bad in law.
  22. When the matter came up for hearing on 28/05/2024 the plaintiff testified as PW1 and did not call any other witnesses. The plaintiff testified that he was the owner of the suit property House No. 732A and he stated that he wanted the court to order that the defendant pays him his arrears. He adopted his witness statement and he produced a list of documents containing 8 documents.
  23. Upon cross-examination he stated that he had the title to the suit property and the proprietor on the title is indicated as one John Mwangangi who is the registered owners. He stated that he is the one who has managed the suit property for all those years although he was not an agent. He testified that he did not have any letter authorizing him to manage the suit property.
  24. He testified that the lease agreement in contention was the one for May 2018 which was to expire on 31/07/2018. That the rent schedule he had was one he prepared himself and it ran from August 2018 to September 2022. From the rent schedule he was paid a monthly rent of Kshs. 95,000 every month until September 2022. He stated that he was claiming rent of Kshs 120,000 which form the arrears and the penalty of Kshs 5% per month bringing the total claimed to Kshs 2,275,000.
  25. It was his testimony that the Lease Agreement showed that the tenant was to pay Kshs 120,000 as monthly rent. That he sent a letter dated 30/09/2022 to the defendant and that his plaint is dated 3/11/2022. He further testified that the tenant vacated the suit premises in March 2023 and that they



- did joint inspection but there was no hand over notes. That the proposed renovation works is dated 15/05/2023 and it was prepared by Dennis Kimanzi who he engaged and the tenant has not signed anywhere on the said renovation report.
26. The plaintiff testified that inspection work was done in April 2023 and the defendant's husband Alex and Quantity Surveyor was present. That the report states renovation works and not repair and that he never produced any receipts to support the renovation works. In his evidence he told the court that during the pendency of the May Agreement, the rent was Kshs 95,000 but from August 2018 the rent was to go up to Kshs. 120,000 that the receipt that he produced for May, June and July 2018 shows that the total amounts were Kshs. 285,000. The second receipt that is dated 20/08/2018 shows that the plaintiff received Kshs 40,000 from Nancy and the balance is indicated as being Kshs 55,000. A third payment of Kshs 50,000 was made vide a receipt dated 3/09/2018 and the last receipt dated 22/10/2018 reflect a payment of Kshs 5,000. The plaintiff wrote on the receipt dated 22/10/2018 that the amounts paid cleared the rent.
  27. The plaintiff further testified that there is a matter filed in the Tribunal E536 of 2022 and that the matter was stood over generally on 23/03/2023. That he never got any orders of eviction. It was his testimony that the tenant continued to pay Kshs 95,000 per month and that he never sought to end the tenancy for failure of payment of Kshs 120,000.
  28. On further cross-examination he stated that he filed another case number 338 of 2019 and he stated in that case that the rent was Kshs 95,000 the plaint is dated 1/03/2019. Therefore, even at March 2019 the plaintiff testified that he stated that the rent was Kshs 95,000. He further stated that the tenant was given orders by the Tribunal stating that the tenant should pay Kshs 95,000 as rent. The Tribunal order is dated 24/05/2022. The same order the plaintiff testified stopped him from evicting the tenant and from increasing rent.
  29. It was the plaintiff's testimony that whereas the defendant's advocate had sent a letter to the plaintiff dated 20/03/2023 seeking to resolve the matter out of court on a without prejudice basis, the plaintiff declined to attend the meeting. He testified that the Tribunal Orders have not been set aside and that the tenant vacated the suit property voluntarily. He also stated that he never refunded the Kshs 190,000 security deposit paid by the defendant neither the amount the defendant claimed to have spent on the renovations since according to him he has not been shown how much was spent.
  30. On re-examination, he told the court that he is a manager and not the owner of the suit property. Further that he never prepared another lease agreement to indicate payment of rent would be Kshs 120,000 from the one the defendant was paying which is Kshs 95,000. With this the plaintiff closed his case.
  31. The defendant called two witnesses DW 1 Alex Nzioka testified that he vacated the suit premises in March 2023 and that he was paying rent of Kshs 95,000. He adopted his witness statement dated 26/03/2024 and stated that he vacated the suit property willingly. He stated that they had obtained a stay order pursuant to a case filed in May 2022 where the Tribunal confirmed that the rent had to be paid at the rate of Kesh 95,000.
  32. He further testified that he was not liable to pay arrears of Kshs 25,000 per month and a penalty of 5% as claimed by the plaintiff. He stated that the plaintiff had no case against him. On cross-examination, he stated he had been paying rent to the plaintiff and that the lease agreement was signed at his house and that it provides for increment from Kshs. 95,000 to Kshs. 120,000. He stated that he never issued a termination notice but he wrote a letter to ask that the increment be rescinded. He stated that there is no judgment from the Tribunal because the case is still ongoing but that they have interim orders



which were extended and the case was Stood Over Generally. That the lease which was for four months is already terminated.

33. DW2- Nancy Rita Mwendu adopted her witness statement dated 6/07/2023 including her list of documents and the supplementary list dated 23/08/2023 exhibits 1- 12. She stated that the rent agreement was for Kshs 95,000 since May 2018 to March 2023. She stated that they vacated the suit property willingly and they had paid all their rent and they owe no arrears. She stated that they did not agree to any rent increment nor a 5% penalty and that she signed the lease agreement for rent on 17/05/2018 for rent of Kshs 95,000 but that the clause on rent increment was not agreed to.
34. That the receipts produced by the plaintiff are for Kshs 95,000 per month. Further that the plaint filed in the Tribunal Case No. 338 of 2019 to show that the rent is for Kshs 95,000 per month. It is her testimony that the agreement for May 2018 was signed under duress after the plaintiff threatened to evict her and her children. Later her husband on getting back from his trip wrote a letter protesting the proposed increment. That the lease agreement was until 31/07/2018 and that there is no other Lease Agreement after that date.
35. Upon cross-examination she stated that all rent was cleared and that they have no rent arrears. She further testified on re-examination that the lease agreement lapsed. That they gave a 2 months notice to the Landlord before vacating. She stated she had filed a counter claim. With that the defendant closed their case
36. The court gave directions to parties to file their respective submissions. The court notes that all parties complied and filed their submissions dated 18/06/2024 for the plaintiff and 23/07/2024 for the defendant. I am impressed by the amount of effort each Counsel put in to ensure that the submissions were filed on time and thank Counsel Morgan and Counsel Nyaguthie for the good work.
37. However before I delve into the issues that I have identified I also need to determine whether this suit is sub judice and also whether I have no jurisdiction to determine this suit as pleaded by the defendant in her defence.

### **Jurisdiction**

38. The issue of jurisdiction has to be determined at the earliest opportunity because without it, a Court must down its tools – Owners Of The Motor Vehicle ‘Lillian S’ Vs Caltex Oil (K) Ltd 1989 K.L.R 1. Although the defendant has pleaded in paragraph twenty six (26) of her defence that the jurisdiction of this Court is “not admitted”, she has herself placed before this same Court her counter-claim for adjudication over the same subject matter. She has pleaded sub judice due to the two Tribunal matters No. E 536 of 2022 and Tribunal Case No. 338 of 2019. The plaintiff also admitted that the Tribunal had Stood Over Generally Tribunal Case No E536 of 2022 awaiting the outcome of the instant suit. No evidence was placed before the court about Tribunal Case No. 338 of 2019.
39. This issue was raised by the defendant vide the Notice of Preliminary Objection 18/01/2023 and this court delivered a ruling dated 21/03/2023. The court addressed the issue of the Notice of Preliminary Objection and stated that evidence will need to be called for to enable it determine whether this suit is sub judice. It is not surprising that the issue has been raised by the defendant since it was not determined.
40. Section 6 of the [Civil Procedure Act](#) provides that:

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between



the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceedings in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

41. Where the test of res sub judice is established or met, the explanatory notes to the Section 6 of the *Civil Procedure Act* stipulates that the latter suit would be stayed until the earlier suit is heard or determined.
42. Both the plaintiff and the defendant have submitted that the Tribunal Stood Over Generally proceedings in Tribunal Case No. 536 of 2022 awaiting the outcome in the instant suit. The court also issued interim orders barring the plaintiff from evicting the defendant from the suit property. Section 6 of the *Civil Procedure Act* stipulates that the latter suit would be stayed in situations of sub judice. This being the case and noting that the Tribunal stayed Case No. 536 of 2022 it follows that this case is not sub judice. Thus the jurisdiction of the court to determine the matter is not therefore in challenge. It is clear to me that the plea on jurisdiction fails in the context elaborated herein above. I dismiss it.

### **Analysis and Determination**

43. I have had time to consider the pleadings, evidence and submissions placed before the court. At the same time I have also considered the applicable legal framework and jurisprudence. The plaintiff and the defendant did not frame a common statement of issues for determination. On his part, the plaintiff identified three issues for consideration which are: i) whether the defendant has breached the lease agreement dated 17/05/2018, ii) Whether the plaintiff is entitled to orders sought in the plaint; and iii) Who should pay for the costs of this suit.
44. Having considered the pleadings, evidence, plaintiff's issues and submissions in this matter, the following are the six (6) key issues commending themselves for determination in this suit:
  - i. Whether the tenancy contract between the parties in this suit was varied to increase the monthly rent from Kshs 95,000 to Kshs 120,000 and accrued rent plus mesne profit claimed.
  - ii. Whether the defendant breached the tenancy contract;
  - iii. Whether the plaintiff breached the tenancy contract;
  - iv. Whether the defendant is entitled to the reliefs sought in the counter-claim; and
  - v. What order should be made in relation to costs of this suit.
45. I will make brief sequential pronouncements on the five issues in the order in which they are itemized. My analysis and pronouncements will proceed from the premise that there is common ground that there existed duly executed tenancy contract between the parties. The contract was contained in the lease executed by the two parties on 17/5/2018.
46. The first issue is whether the tenancy contract between the parties was varied to increase the monthly rent from Kshs 95,000 to Kshs 120,000 and the accrued rent and mesne profits. Parties to this dispute entered into the tenancy agreement on the basis of a lease agreement dated 17/5/2018 which was for four months expiring on 31/07/2018. Neither of the parties disputes the lease. The defendant, however, contends that the plaintiff sought to change the terms of the lease to increase the rent to Kshs 120,000 but the defendant vide an undated letter asked the plaintiff to rescind the rent increment. The plaintiff's case is that the terms of the lease were factored into the lease agreement which the defendant signed willingly.
47. The written and signed lease contained a clear provision on the rent payable monthly. Under the parole evidence rule, where the intention of the parties is clear from the document signed by the parties, parole



evidence cannot be used to vary the clear terms of the document. The Court of Appeal emphasized this principle in *Twiga Chemicals Industries Limited Versus Allan Stephen Reynolds* [2014] EKLR in the following words

“The parole evidence rule is a well-granted rule in law. The general rule is that the intention of the parties to an agreement should be ascertained from the document as is it deemed that what the parties intended is what was stated in the agreement”

48. DW2- contended that he wrote a letter to the plaintiff to rescind the increment and that the plaintiff continued to receive the rent of Kshs 95,000. He testified that he signed the lease agreement for monthly rent of Kshs 95,000 per month and that the clause on increment was not agreed to. From my analysis of the cases filed in the Tribunal the plaintiff was indeed claiming rent of Kshs 95,000 so it is not clear at what point he sought to have the tenants pay Kshs 120,000 whereas he was receiving Kshs 95,000 every month.
49. Clause 7 of the lease agreement reads as follows:
  - “7. In the event that the tenant wishes to extend the lease herein beyond the expiry dated of 31<sup>st</sup> July 2018 the rent shall increase from the current rate of Kshs 95,000 to Kshs 120,000”.
50. On his part the plaintiff did not present before the court a document to attest to the fact that the tenant wished to extend the lease beyond 31<sup>st</sup> July 2018. At same time plaintiff in his evidence told the court that there were Tribunal Court Orders stating that the rent was Kshs 95,000 and the Order also stopped the plaintiff from evicting the tenant from the suit property and from increasing rent.
51. It therefore follows that there was no new lease agreement except the one dated 17/05/2018 which upon expiry meant that the parties’ engagements were guided by their conduct on a monthly basis. From the evidence presented in court the defendants continued paying Kshs 95,000 per month and the plaintiff received it and he never prepared another lease agreement to indicate payment of Kshs 120,000. It follows therefore that the claim for accrued rent is thus not justified. The mesne profits is a special claim which has to be proved and the plaintiff has not done a good job in justifying his claim for it. I am not persuaded that he deserves to be awarded the same.
52. There is therefore no evidence to suggest that the terms of the lease were varied. If the parties intended to vary the lease, they could have executed a document clearly stating that they had varied the monthly rent. My finding on the first issue therefore is that there was no variation of the terms of the tenancy contract between the parties to this suit.
53. The second issue is whether the defendant breached the tenancy. The third issue is whether the plaintiff breached the tenancy contract by failing to pay rent. I will determine the two issues concurrently because they both revolve around the question of the breach. The defendant was entitled to enjoy quiet possession of the suit premises if she paid rent as agreed and discharged her other obligations in the tenancy contract. The defendant admitted at paragraph 28 that they have dutifully paid rent anywhere between 20<sup>th</sup> to 29<sup>th</sup> of every month since 2016 with a few occasions after the aforementioned dates but way before the expected date of 5<sup>th</sup> of every consecutive month.
54. The defendant moved to court to obtain a court order after the plaintiff served him with a notice to vacate the house on account of her failure to pay rent increased rent of Kshs 120,000 after the expiry of the lease agreement dated 17/05/2018. The defendant similarly admitted in her evidence during cross-examination that she ran into rent arrears.



55. Under clause 4 of the lease, the plaintiff was entitled to re-enter the premises and take possession of the premises in the event of breach by the defendant. This is the contractual right which the plaintiff exercised. This is what prompted the defendant to issue notice to move out of the premises. The defendant testified that he paid all rent and did not owe any rent arrears based on the monthly rent of Kshs 95,000. In the defendant's own evidence they vacated willfully after issuing a two month notice dated 4/01/2023 out of courtesy since they were obligated to issue a one month notice. It is therefore clear that upon obtaining the court order, the defendant continued to stay in the suit premises without paying the rent increment. Having assessed the evidence at the full trial, the court is satisfied, on account of the defendants on admission of failure to pay rent but I hasten to add that the rent was always paid before the 5<sup>th</sup> of the consecutive month. In the circumstances I find no breach on the part of the defendant since the rent she was required to pay she did diligently. The plaintiff on his part exercised his right as per clause 4 of the Lease Agreement by entering the suit premises to carry out repairs and renovations. By the plaintiff's own testimony the suit premises have already been rented out to someone else since the defendants are no longer in the suit premises.
56. The plaintiff however according to Clause 7(c) (ii) was to pay all outstanding utility bills owed and/or incurred prior to the lease and I note that the defendants have not made a claim for it. Instead they have made a claim for refund of Kshs 500,000 for repairs and renovations to the suit property which the plaintiff did not respond to in his reply to the defence and counter-claim. At the same time the plaintiff is claiming a sum of Kshs 403,068/- for repairing the suit premises when he re-entered and took possession.
57. At the same time the plaintiff did not provide any documents to counter the rent reconciliation document filed by the defendant showing that she had paid all the rent. In the circumstances I am not able to make any finding for the plaintiff in terms of rent owing.
58. Issues (iv) and (v) relate to the reliefs available to the parties. I have made a finding that there was no breach by the defendant since she paid all the rent. On the part of the plaintiff despite the defendant claiming that she paid the outstanding bills a responsibility solely meant to be undertaken by the plaintiff as per the Lease Agreement Clause 7(c) (ii) the defendant failed to provide any evidence to that effect. Infact from the pleadings it seems she only mentioned it casually in passing.
59. In any event, the reliefs sought by the plaintiff and by the defendant are overtaken by events. Principally payment of arrears claimed by the plaintiff is not supported by an agreement signed after the one dated 17/05/2018 expired. Further I have looked at the tabulation presented by the defendants and note that the rent was fully paid. The defendants have already moved out of the suit premises on their own volition in 2023 thus the issuance of an eviction order shall be in vain. The term of the lease was to lapse in July 2018. It is now 2024. None of the orders sought by the plaintiff nor the defendant in the counter claim are available in the circumstances.

### **Disposal Orders**

60. In light of the above findings, I make the following disposal orders in this suit:
- a. The plaintiff's suit is dismissed for lack of merit.
  - b. The defendant's counterclaim lacks merit and is dismissed
  - c. The Plaintiff shall bear costs of this suit and the counter-claim.

It is so ordered



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF OCTOBER 2024.

.....

**MOGENI J**

**JUDGE**

In the virtual presence of: -

Ms. Nyaguthie for Defendant

Mr. Morgan for Defendant

.....

**MOGENI J**

**JUDGE**

