



**Argos Furnishers Limited v Comat Trading Company Limited (Civil Case 24 of 2019)
[2024] KEHC 9930 (KLR) (Commercial and Tax) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 24 OF 2019
JWW MONG'ARE, J
JULY 30, 2024**

BETWEEN

ARGOS FURNISHERS LIMITED PLAINTIFF

AND

COMAT TRADING COMPANY LIMITED DEFENDANT

JUDGMENT

1. In this suit the Plaintiff's claim against the Defendant as enumerated in its further amended plaint dated 20th January 2020 is for recovery of Kshs.21,660,115.50/= as special damages, general damages for loss of income and business and interest. The Plaintiff also seeks compensation for future profits and the costs of the suit.
2. The Plaintiff pleaded that it was a tenant in a shop located on the property 209/1438/39 situated along Gaborone Road within Nairobi ("the suit premises") which was owned by Shree Wanza Union Registered Trustees. The Defendant purchased the suit property around 1st July, 2010 and the Tenancy agreement was terminated in May 2011 without a valid notice. After the tenancy agreement was terminated the suit premises were demolished and the Plaintiff's premises was vandalized and goods stolen.
3. According to the Plaintiff, the Defendant's action of demolishing the suit premises violated the Business Premises and Rent Tribunal orders, barring the demolitions. He contends the unlawful act was commenced by Defendant on the notion that Plaintiff had not objected to the Defendant's notice. As a result of the demolition, the Plaintiff suffered massive business loss and damage including loss of profit and income amounting to Kshs.21,660,115.50/=.
4. In its statement of Defence dated 5th March, 2020 the Defendant avers it purchased the suit premises from Shree Wanza Union Registered Trustees for valuable consideration and it proceeded to develop



a 16-story building. The Defendant denies colluding with any person in engaging in any fraudulent activities. it also denies being served with any court orders.

5. At the trial, the Plaintiff called two (2) witnesses. On the other hand, the Defendant did not appear in court on the 4th of October 2023 when the suit was slated for the defence hearing. The court having satisfied itself that the Defendant had been served with the court's directions on several occasions but failed to attend court proceeded to issue directions to the effect that the Defendant's defence was marked as abandoned.
6. Thereafter the Plaintiff filed written submissions dated 16th November 2023. In its submissions, it stated the Plaintiff was a lawful tenant on the suit premises since 1984 as per the Trade Licence application letter dated 3rd August, 1984. The Plaintiff was engaging in dealing with electronics, home appliances, furniture and the business of hire purchase. However, the business was cut short after the demolitions conducted by the Defendant in May 2011 thereby frustrating the tenancy agreement and without issuing a notice to vacate.

Analysis and Determination

7. I have carefully considered the pleadings, and the evidence adduced by the Plaintiff together with the written submissions filed by the Plaintiff. I note that the following issues arise for determination, to wit:-
 - i. whether the Plaintiff has proved its case against the Defendant on a balance of probability.
 - ii. Whether the Plaintiff is entitled to the reliefs sought?
Whether the Plaintiff has proved its case against the Defendant on a balance of probability.
8. It is trite law that he who alleges must prove as envisaged in Sections 107 and 108 of the *Evidence Act*. In the instant suit, the burden of proving the facts and contentions that support the Plaintiff's case lies with the Plaintiff. The Plaintiff alleges breach of the tenancy agreement by the Defendant. Therefore, the Plaintiff must satisfy this court that there was a tenancy agreement breached by the Defendant, and as a consequence, the Plaintiff suffered loss and damages.
9. The court of appeal in the case of *Kenya Breweries Limited Kiambu v General Transport Agency Limited* [2000] eKLR, the court said—

“It is the duty of the Plaintiff to prove its claim for damages as pleaded. It is not enough simply to put before the court a great deal of material and expect the court to make a finding in his favour. As was said by Lord Goddard, CJ in *Bonham Carters Hyde Park Hotel Limited* [1948] 64TR 177 thus “The Plaintiff must understand that if they bring actions for damages, it is for them to prove damages. It is not enough to write down particulars and, so to speak, throw them at the head of the court, saying, “this is what I have lost, I ask you to give me these damages.” They have to prove it.”
10. In evidence the Plaintiff adduced a letter of offer dated 3rd August 1984 by the Registered Trustees of Shree Wanza Union in Nairobi confirming leasing the suit property to Plaintiff, in addition, the Plaintiff also adduced a copy of the sale agreement dated 1st July 2010 between the Trustees of Shree Wanza Union and Comat Trading Company for the sale of the suit premises.
11. A glance at the court record, the Plaintiff has attached a copy of the letter dated 6th February, 2011 from Shree Wanza confirming the tenancy agreement was transferred to the Defendant. Also annexed was a certificate of business registration as evidence that it conducted business in the suit premises.



12. The Plaintiff attributes the damage to the Defendant for demolishing the suit property without prior notice to the Plaintiff and before the lapse of the tenancy agreement.
13. It is not in dispute that the Defendant purchased the Suit premises from the Defendant. It is also not in dispute the Plaintiff conducted business in the suit premises. The Defendant admitted to having developed the suit premises into a 16-storey commercial building. Since the Defendant filed their defence but failed to attend court to prosecute the same and the court had marked the defence as abandoned the Plaintiff's case is uncontroverted.
14. Considering the evidence on record and the documents submitted, I am persuaded that the Plaintiff has adduced sufficient evidence to demonstrate on a balance of probability that the Defendant caused the breach of the tenancy agreement Whether the Plaintiff is entitled to the reliefs sought?
15. Under the common law the principal remedy for breach of contract is an award of damages to compensate a party for the loss suffered due to the violation. Compensation places the injured party in the same position it was in before the breach.
16. For the court to award the remedy for damages the Plaintiff is required to prove the existence of a contract, the breach of the contract and the loss suffered by the breach. In the instant case, the Plaintiff has proved that indeed the Defendant bought the suit premises together with the existing tenancies as per the letter dated 6th February 2011. The transfer of the tenancy agreement and the breach of the tenancy agreement collaborate this fact.
17. In compensation of the loss suffered the Plaintiff pleads compensation on general and specific damages under different heads. To successfully claim specific damages, it is a trite law that specific damages must be pleaded and adequately proved. See *Wilson Gitau-v-Philip Kuria Wainaina*(2006)e KLR where Court stated that:-

“It is trite law that special damages must not only be pleaded but must be specifically proved”

18. From the further amended plaint, the Plaintiff pleaded special damages totalling Kshs.21, 660,115. 50/= under different heads. To prove loss of stock of Kshs.5,826,366/= the Plaintiff attached invoices evidencing the purchase of the stock. The non-stock items as listed on page 43 of the Plaintiff's list of documents the Plaintiff demonstrated their purchase through invoices attached at pages 44 to 67 of the Plaintiff's list of documents. The loss suffered under the renovation costs of Kshs.2,069,678/= was also evidenced by the various invoices from pages 68-79. The goodwill business at the time of demolition was Kshs.5,000,000/=, and the loss suffered under the head's cost of security was Kshs.40,139.50/= which was paid to G4S Security Services. The projection of business for the next 6 months following the demolitions was estimated at Kshs.7,800,000/=
19. The Plaintiff contends that due to the demolitions by the Defendant, it suffered loss of business and the property vandalized. In support of the allegation of loss, the Plaintiff has adduced a summarized report of the items in the shop premises before the demolition and invoices confirming the purchase of the property.
20. it is trite law that general damages are not awarded in cases of breach of contract. see *Securicor (K) v Benson David Onyango & Anor* [2008] eKLR. where the court held:-

“The same situation applies to the case at bar in that the Respondent having quantified what it considered to have been the loss it suffered, and gone on to particularize the same, there would be absolutely no basis upon which the learned Judge would go ahead to award the totally different, unrelated, unclaimed and unquantified sum of Kshs. 30 million merely



because he believed that the respondent “had suffered serious damages” (sic). What was suffered or was believed to have been suffered, the damage that is, to be compensated by way of damages, could only be known by the respondent and it claimed it in specific terms which, in the event, it was unable to prove. To award it anything else would be to engage in sympathetic sentimentalism as opposed to proof-based judicial determination.”

Arising from the above findings this court holds that the Plaintiff’s claim of general damages is not allowable, as damages are not recoverable in instances of alleged breach of contract.

21. For the reasons set out above, I enter judgment in favour of the Plaintiff against the Defendant as follows:-

- i. judgment is entered for the sum of Kshs.21, 660,115.50/= with interest at the court rates from the date of filing the suit until payment in full.
- ii. The Plaintiff is awarded costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JULY, 2024.

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J.W.W. MONG’ARE

JUDGE

In the Presence of:-

Ms. Sala for the Applicant.

No. appearance for the Defendant.

Amos - Court Assistant

