



**Kuwinda Holdings Ltd v Lane (Civil Suit 627 of 2015)  
[2023] KEHC 21771 (KLR) (Commercial and Tax) (28 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21771 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 627 OF 2015  
JWW MONG'ARE, J  
AUGUST 28, 2023**

**BETWEEN**

**KUWINDA HOLDINGS LTD ..... PLAINTIFF**

**AND**

**MICHELLE LANE ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated October 24, 2015 the Plaintiff moved this court seeking for judgment against the Defendant for the following: -
  - a. Kshs.5,040,000/- being 3½ years rent for Manor West at a rate of Kshs.120,000/- per month.
  - b. Kshs.1,690,000/- towards loss of rental income in respect of Manor West Residence.
  - c. Kshs.435,000/- being three months' rent in lieu of notice for Mews Cottage No. 7.
  - d. Interest on (b) and (c) above.
  - e. Costs of this suit.
2. On February 16, 2013, the Defendant filed her defence admitting to the existence of the lease agreement but denying the claim as per the plaint and urged the court to dismiss the Plaintiff's suit with cost to her.

**The Plaintiff's Case:-**

3. The Plaintiff, Kuwinda Holdings Limited, is a duly incorporated company which owns the property known as LR. 10262- Located in Karen, Nairobi area. On the said property, the Plaintiff has constructed several residential houses. Collins Davies, who testified as PW 1, is a director of the Plaintiff. Collins Davies worked as an aircraft engineer and worked with the Defendant's husband,



Mr. Mark Reading, a commercial pilot, who also testified as DW2. It was the evidence of Mr. Collins Davies that he enjoyed a cordial relationship with the Defendant and her husband who he had known for over 25 years.

4. Among the properties in the property of the Plaintiff was a house known as Manor West Residence. According to PW1 the Defendant and her husband agreed to rent the same for a period of 3½ years at a monthly rent of Kshs.120,000/-. PW1 further testified that the Defendant was to occupy the said premises for a period of 3½ years and instead of paying the agreed monthly rent, she was to repair, renovate and improve the premises being the house and its surrounding. The Defendant was also to repair the swimming pool which was part of the surrounding. She was to spend at least Kshs.3,000,000/- to fix both the house and the swimming pool. To augment his testimony, the Plaintiff in his bundle of documents produced the handwritten lease agreement that had been written by the Defendant and signed by Mr. Collins Davies for the Plaintiff. PW1 maintains that the relationship between himself and the Defendant and her spouse was a cordial one and when they requested after the lapse of 3½ years to move to a different but smaller unit, he agreed and they moved into Mews Cottage No. 6, did some repairs and found it small and asked to move to Mews Cottage No. 7, for which she signed a lease agreement.
5. PW1 testified that they had exchanged notes and letters around the repair and fixing of the swimming pool and the Defendants kept promising to get it done. He produced in his bundle of document his written offer to provide the labour force for the pool work if they could avail the equipment but the same was not taken up by the Defendant. PW1 testified that in January of 2014 the Defendant moved to yet another of the Plaintiff's premises this time Mews Cottage No. 7. According to him the Defendant were to give a written Notice of 3 months if they wished to vacate the premises but in August of 2014 they abruptly moved out without the requisite as per the tenancy agreement.
6. The Plaintiff maintains that the Defendant violated the terms of the agreement in failing to fix and repair the swimming pool and therefore demands that the full rent for the 3½ years, which it insists is due and payable at the rate of Kshs.120,000/-. The Plaintiff further maintains that the Defendant was to provide invoices and receipts for all the repairs undertaken but did not do so. The Plaintiff also claims payment of 3 months rents in lieu notice for the use and tenancy of the Mews Cottage No.7 by the Defendants. The Plaintiff produced a bundle of documents in evidence detailing the correspondences and the tenancy agreements for the three properties and urges the court to find in his favour and enter judgment as prayed in the plaint.

#### **The Defendants Case:-**

7. The Defendant while admitting to have been a tenant of the Plaintiff in the three properties owned by the Plaintiff denies that she is indebted to the Plaintiff as claimed in the plaint. She testified as DW1 while her husband, Mr. Mark Reading testified as DW2. They both acknowledged that indeed they were friends with Mr. Collins Davies and had indeed occupied the Plaintiff's 3 properties in Karen between July 2009 and August 2014. The Defendant in her testimony admitted that indeed they had agreed to repair the first house known as Manor West Residence and that the premises were in a derelict condition when they took it up and fixed it. She produced as part of her evidence photographs showing the house before and after she had fixed it up. She confirmed that she was also to fix and repair the swimming pool as part of the tenancy agreement for the first unit but testified that she did not get around to having the same done during her tenure as a tenant of the Plaintiff in the three premises. She denied the claim that she undertook substandard repairs on the premises and instead testified that Mr. Collins was very impressed with the way the house turned out and even attended the house warming



when they moved in and complimented here for it. She however did not offer an explanation as to why she never got round to fixing the swimming pool as agreed.

8. On the claim for 3 months rents in lieu of notice for the third property, Mews Cottage No. 7, the Defendant confirmed that indeed she had signed a tenancy agreement with the condition that she would provide 3 months' notice if she chose to move out. She however testified that the Plaintiff violated the tenancy agreement by allowing a stranger to occupy the domestic quarters attached to the property which left her feeling insecure and she opted to leave the premises. Instead, she send an email message and left the premises. She denied being indebted to the Plaintiff and urged the court to dismiss the suit against her with costs.

#### **Analysis and Determination:-**

9. I have carefully analysed the pleadings and the attached documents and testamentary evidence produced by the parties. I have further carefully considered the submissions by the parties and I identify one issue for determination to wit; "Whether the Plaintiff is entitled to the reliefs sought.
10. "It is common ground that the parties herein were in tenant/ landlord relationship that lasted a period of 6 years and that the director of the Plaintiff, Mr. Collins Davies, enjoyed a cordial relationship with the Defendant and her husband, Mr. Mark Reading, who also was his workmate. Both parties agree that they entered into a written contract for the tenancy of the first premises, Manor West Residence. Both parties further agree that indeed the rent due and payable for the first 3 ½ years was to be applied to fix and renovate the premises including the swimming pool.
11. The first relief that the Plaintiff seeks is "Kshs.5,040,000/- being 3½ years rent for Manor West at a rate of Kshs.120,000/- per month." While the Plaintiff is claiming the entire rent for the 3½ years for the Manor West property, the Defendant contends that she spent the same fixing the house which she claims to have been in a derelict condition. She produced photographs showing the state of the house before and after repairs and insist that she spent a lot of money making the same habitable and is therefore not indebted to the Plaintiff or at all. The Defendant did not produce any receipts or invoices to support her claim of the expenditure. The Plaintiff on its part maintained that it was part of the tenancy agreement that the Defendant was to utilise the rental income to repair and fix the house and its surroundings including the swimming pool and also provide invoices and receipts. Failure to do so, the Plaintiff argued, was in violation of the agreement that the Defendant herself drew and could therefore not escape liability under the said terms and conditions.
12. I have had the opportunity from the bundle of documents provided as evidence to consider the tenancy agreement that the Defendant as was to apply the rental income for the premises to improving the house and the surroundings of the Manor West Residence. She was to fix the house and the swimming pool.
13. Courts have held that parties are bound by the terms of the contracts they write for them. Courts will not interfere with the wishes of parties to a contract where the same has been reduced into writing and entered into without undue duress or coercion. This was reiterated by the Court of Appeal in the case of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR, where the court observed that:-

" A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge."



Similarly, in the case before me, I find that the parties willingly and freely entered into a contract where the Defendant was to occupy Manor West for a period of 3½ years at a monthly rent of Kshs.120,000/-. In place of rent the Defendant was to repair the house and the surrounding including the swimming pool. She stayed on the property for 3½ years without paying the rent and she admitted that she did not repair or fix the pool. I am therefore persuaded that it was a term of the contract that the parties entered into that she was to fix the house and the swimming pool. Failure to fix or repair the pool on her part was a breach of the contract that she herself drafted. I find therefore that the Plaintiff has proved to the required degree of proof the relief sought for the payment “Kshs 5,040,000/- being 3½ years rent for Manor West at a rate of Kshs.120,000/- per month.

14. The second relief that the plaintiff sought was for “Kshs.1,690,000/- towards loss of rental income in respect of Manor West Residence.” The Plaintiff claims that as a result of the Defendant’s failure to fix and repair the pool, he was forced to reduce the rent for the Manor West Residence when the defendant moved out. The Plaintiff did not however produce any evidence to establish how much rental income he lost as a result. There is also nothing placed on record to demonstrate what the rent would have been had the pool been working when the Defendant moved. I find therefore that the Plaintiff has not laid a basis for this claim and I shall disallow the same.
15. The third relief sought is for the “Kshs.435,000/- being three months’ rent in lieu of notice for Mews Cottage No. 7.” During the hearing of this matter, the Plaintiff produced a lease agreement for the 3<sup>rd</sup> property that the Defendant rented being Mews Cottage No. 7 and the rental agreement was for Kshs.145,000/-. In the said lease agreement, there was an express condition that required the Defendant to give a 3 months’ notice if they wished to vacate the premises. The Defendant admitted in her testimony that indeed the said clause existed but insisted that she moved out without the requisite notice because the Plaintiff interfered with her quiet and peaceful enjoyment of the premises. The Defendant admitted to not giving the Plaintiff’s the requisite three month notice as required. The Defendant signed a tenancy agreement that required that she give a three-month notice if she chose to vacate. She admitted to not having done so. I am therefore satisfied that the Plaintiff has established this claim to the required standard of proof and I shall allow it.
16. In conclusion therefore I find and hold that the plaintiff has established his case on a balance of probabilities and is entitled to the reliefs sought. Judgment is therefore entered for the Plaintiff against the defendant as follows;
  - a. The sum of “Kshs.5,040,000/- being 3½ years rent for Manor West at a rate of Kshs.120,000/- per month.
  - b. The Sum of “Kshs.435,000/- being three months’ rent in lieu of notice for Mews Cottage No. 7.
  - c. Interest on the two claims at court rates from the date of filing suit.
  - d. Costs of the suit to the Plaintiff.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF AUGUST 2023.**

.....

**J. W. W. MONG’ARE**

**JUDGE**

In the Presence of:-



No appearance for the Plaintiff.

Mr. Mungu holding brief for Ms. Khasira for the Defendant.

Lucy - Court Assistant

