



**John Kagechu Muiruri t/a Mururi Auto Parts & 5 others v Kihumo
Property Developers (K) Ltd (Environment & Land Case 945 of 2016)
[2023] KEELC 20378 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20378 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 945 OF 2016
LN MBUGUA, J
SEPTEMBER 28, 2023**

BETWEEN

JOHN KAGECHU MUIRURI T/A MURURI AUTO PARTS 1ST PLAINTIFF

**RICHARD KIMANI WAHINYA T/A MARKHAN ENTERPRISES 2ND
PLAINTIFF**

ROYAL TYRES LTD 3RD PLAINTIFF

WAMBUA MUSAU KANYENGE T/A SAVULAI TYRES 4TH PLAINTIFF

PETER KIOKO MAKAU T/A KIKO AUTO TYRES 5TH PLAINTIFF

PATEL AUTOMOBILE HOUSE LIMITED 6TH PLAINTIFF

AND

KIHUMO PROPERTY DEVELOPERS (K) LTD DEFENDANT

JUDGMENT

(Amended Pursuant to Section 99 of the [Civil Procedure Code](#))

1. The Plaintiffs commenced this suit by a plaint dated 26.7.2016. They contended that they were tenants of the Defendant in the property known as Kihumo Building along Racecourse Road situated on LR No. 209/229/1. They averred that from February 2011, they were granted leases for 5 years and 6 months commencing from 1.3.2011 to 31.8.2016. That on 30.3.2016, they received a letter from the Defendant's advocates indicating that the Defendant had no intention of renewing their leases after expiry and demanding vacant possession. Their case was that on the strength of another letter from the Defendant dated 14.12.2015, they legitimately expected that their leases would be renewed. The plaintiffs were therefore seeking orders of injunction restraining the defendant from evicting them from the suit premises.



2. The Defendant's statement of defence and counterclaim is dated 9.9.2016, where it contends that Plaintiffs' leases expired by effluxion of time on 31.4.2016 and 31.8.2016 for the 2nd Plaintiff. It seeks the following orders in its counterclaim;
 - a. An order that the Plaintiffs do deliver vacant possession of the suit property known as L.R No. 209/229/1 Racecourse Road Nairobi (Kihumo Building) to the Defendant forthwith.
 - b. An order that the Plaintiffs be evicted forthwith from the suit property known as L.R No. 209/229/1 Racecourse Road Nairobi (Kihumo Building) in the event that they do not deliver vacant possession forthwith.
 - c. Mesne profits based on a rental assessment report.
 - d. Costs of this suit and interest thereon.
3. The defendant filed an application dated 28.9.2016 seeking orders for the striking out of the plaintiffs' suit, summary judgment for the plaintiffs to give vacant possession and for the eviction of the plaintiffs. By a ruling delivered on 29.11.2017, the court allowed the aforementioned application, of which the defendant's counterclaim was to be set down for assessment of mesne profits. The plaintiffs did not turn up for hearing.
4. The Defendant called 2 witness, PW1 was Tony Wanyutu Nduwa, a valuer. He told the court that he was instructed by the Defendant to do a fair rental assessment of the suit property as at 6.6.2018. He did visit the site and compared the property with similar properties in the neighbourhood. He produced his report as P. Exhibit 1.
5. PW2 was James Njogu Njenga, a director of the Defendant. He adopted his witness statement dated 9.9.2016 as his evidence. He produced 13 items contained in the Defendant's list of documents dated 9.9.2016 and a supplementary list at page 9 of the Defendants trial bundle as D. Exhibit 2-14.
6. In his witness statement, he states that the Defendant acquired the suit property on 26.11.2012 and took over the subsisting leases, including those of the Plaintiffs.
7. He further states that the Defendant communicated to the Plaintiff through letters dated 30.3.2016 that it had no intention to renew their leases.
8. He told the court that the Plaintiffs' leases expired in 2016 and they stopped paying rent yet they stayed in the suit property up to December 2017. He added that the Defendant is claiming rent for 16 months payable at ksh.350,000/= per month for 7 shops hence ksh.5,600,000/= per year.
9. The Defendant did not file written submissions.

Determination

10. The sole issue for determination concerns the assessment of mesne profits due to the Defendant. Mesne profits relate to compensation recoverable from a person who has been in wrongful possession of immovable property.
11. This court already found that the Plaintiffs leases expired in 2016. The evidence of PW2 which is uncontroverted is that the Plaintiffs continued to wrongfully occupy the suit premises 16 months after their leases had expired and only left in December 2017.
12. The rental assessment report produced by PW1 as P-Exhibit 1 indicates the value that each shop would attract in rent as at 6.6.2018 as follows; Shop 1 - 4 ksh.40,000/= for each shop, shop 5 at ksh.55,000/



=, shop 6 at kshs.70,000/= and shop 7 at ksh.65 ,000/=. Total rent payable per month is valued at ksh.350,000/=.

13. The said valuation was done about ½ a years after the Plaintiff's had vacated the suit property in December 2017. I find that there is no justification for the increase in rent from what the Plaintiffs were paying vide the leases that expired in 2016.

14. In *Rajan Shab T/A Rajan S. Shab & Partners v Bipin P. Shab* [2016] eKLR, the court stated as follows on the issue of mesne profits;

“It is settled principle of law that wrongful possession is the very essence of a claim for mesne profits and the very foundation of the unlawful possessor's liability therefore.”

15. The defendant is entitled to the mesne profits, but I reject the rental assessment report availed by PW1 taking into account that the same reflects a valuation of the suit property for the period 6.6.2018. However, since the court cannot independently assess the rent payable at the time the Plaintiffs vacated their respective shops, the only basis upon which the court can make a determination for rent are the leases which terminated in 2016.

16. In the circumstances, the value of the last rent payable as demonstrated in the leases would be the mesne profits payable to the Defendant. The said leases run from page 13 to 30 of defendant's documents which shows that the 1st Plaintiff was paying ksh.16,500/=, the 2nd Plaintiff was paying ksh.15,000/=, the 3rd Plaintiff was paying ksh.18,000/=, the 4th Plaintiff was paying ksh, 17000/= the 5th Plaintiff was paying kshs.12,500 while the 6th Plaintiff was paying kshs.20,000/= per month. This value is to be calculated times 16 months which is the period the Plaintiffs' extended their stay in their respective shops.

17. In the final analysis, judgment is hereby entered for the defendant against the plaintiffs as follows;

1. 1st Plaintiff Sh 264, 000 (Sh. 16,500 x 16 months)

2. 2nd Plaintiff Sh 240 000 (Sh. 15,000 x 16 months)

3. 3rd Plaintiff Sh.288 000 (Sh. 18,000 x 16 months)

4. 4th Plaintiff Sh.272 000 (Sh. 17,000 x 16 months)

5. 5th Plaintiff Sh.200 000 (Sh. 12,500 x 16 months)

6. 5th Plaintiff Sh.320 000. (Sh. 20,000 x 16 months)

7. 6th Plaintiff Sh. 320 000 (Sh. 20,000 x 16 months)

8. The plaintiffs are condemned to pay the costs of the suit plus interest at court's rate to the defendant; The same to be calculated from the time of delivery of this judgement.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Njoroge holding brief for Mongeri for Defendant

Court Assistant: Eddel



Amended at Nairobi this 13th Day of May, 2024 through Microsoft Teams.

