



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 842 OF 2007**

**JOSEPHAT MAINA IRUMBI.....APPELLANT**

**VERSUS**

**MARGARET WAMBUI NJOGU.....1<sup>ST</sup> RESPONDENT**

**DAVID KAMAU.....2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the decision of Hon. Were Resident Magistrate in Milimani CMCC 1241 OF 2005 made on 10<sup>th</sup> September, 2017)*

**JUDGMENT**

The appellant was sued by the respondents for damages for breach of contract. The appellant was an agent of the landlord who owned premises occupied by the respondents. There was no agreement between the appellant and the respondent that renovations could be conducted or done in the premises. The respondent renovated the premises spending the money claimed in the plaint and pleaded that this was with an explicit or implied authority of the landlord.

Upon the completion of the renovations the premises were let out and the appellant started collecting the rent from the tenants. Thereafter, a claim was raised of Kshs. 211,129.20 which was a claim raised in the plaint. Receipts were produced to justify the said expenditure.

After the hearing, the court entered judgment in the sum of Kshs. 86,129.20 after allowing the appellant to deduct the sum of Kshs. 125,000/= being a set off arrears due as at the time the premises were handed over. Aggrieved by the said judgment the appellant lodged this appeal.

As the first appellate court it is my duty to assess and evaluate the evidence adduced before the lower court noting that I did not have the advantage of seeing and observing the witnesses testify. Having done so, I am persuaded that the truth lies with the finding of the trial court that the respondent proved his case against the appellant in the circumstances of the case.

The lower court had the opportunity to hear and observe the demeanour of the witnesses. He was persuaded that the respondent told the court the truth. The allegation that the appellant was wrongly joined in the proceedings cannot be sustained because he was clearly the agent for the landlord. He had the opportunity to enjoin the landlord which he did not. The respondent called P.W. 3 who made the renovations and repairs to the premises. The appellant never stopped him from doing so.

I have come to the conclusion that the appeal has no merit and therefore should be dismissed with costs to the respondents.

*Dated, signed and delivered at Nairobi this 15<sup>th</sup> Day of March, 2019.*

**A. MBOGHOLI MSAGHA**

**JUDGE**