



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1302 OF 2005

(FORMERLY HCCC 854 OF 1999)

KANTARIA INVESTMENTS LTDPLAINTIFF

-VERSUS-

ATTORNEY GENERAL..... DEFENDANT

JUDGEMENT

1) Kantaria Investment Ltd, the plaintiff herein, filed an action against the Attorney General, the defendant herein, vide the plaint dated 4th June 1999 seeking for judgment as follows:

a. Mesne profits @ kshs.20,000/= for period 1-8-95 to 31-4-97 kshs.10,080,000/-.

b. Kshs.479,621/= unpaid electricity and water.

c. Kshs.3,029,640.65 for repair charges.

d. Damages for breach of contract;

e. Interest on a, b, c and d, at 36% per centum per annum;

f. Such further or other relief as this honourable court may deem fit to grant.

The defendant filed a defence to deny the plaintiff's claim. When this suit came up for hearing, the plaintiff was permitted to prosecute the suit ex parte when the defendant failed to turn up.

2) The plaintiff summoned one Madhusudan Gulabhai Desai (PW1). PW1 told this court that he is a director of the plaintiff company. He adopted the contents of his written witness statement. He also produced and relied upon the bundle of documents in the plaintiff's list of documents.

3) It is the evidence of PW1 that the plaintiff owned 24 flats on L.R. No. 1870/IV/75, David Osieli Road in Westlands Nairobi. The plaintiff stated that it let out those flats to the Ministry of Public Works for a period of 3 years from 1st August 1992 to 31st July 1995.

4) PW1 further stated that it was an express term of the tenancy that the defendant would hand over the flats in a tenantable condition as at the time of taking over possession. It is also said that the Ministry of Public Works would settle all the utility bills and carry out repairs before handing over the flats on or before 31st July 1995.

5) It is the evidence of PW1 that the defendant breached the aforesaid terms and conditions. First, the ministry is said to have failed to release the flats and remained in occupation until 6th June 1996.

6) It is also said that repair work commenced on 7th June 1996. The plaintiff stated that it carried out the repairs at a cost of kshs.3,029,640/65. PW1 produced the relevant documents to show it incurred the aforesaid sum on repairs.

7) The plaintiff stated that it lost rental income at a rate of kshs.20,000/= per month per flat for a period of a year and therefore it seeks to be paid a sum of kshs.10,080,000/=. The plaintiff further claims to be paid kshs.479,621/= as a refund of payments it made for water and electricity bills.

8) Though the defendant filed a defence to deny the plaintiff's claim, the defendant failed to summon witnesses to testify to controvert the plaintiff's evidence. The parties identified the agreed issues for determination. The 1, 2 and 6 issues are related. The correspondences presented to this court indicate that the defendant did not hand over the flats as agreed and it even sought to hold over for a year. It is also apparent that the defendant did not hand over the flats in tenantable repair nor did it settle the bills.

9) The other issue which was raised by the defence is whether this suit is bad in law. The evidence presented by the plaintiff indicate that there was part payment on the part of the Ministry of Public Works on 12th August 1997 and on 11th January 2002 whose effect is that the limitation period for filing an action is postponed.

10) It is apparent from the evidence tendered by the plaintiff that the flats were handed over to the plaintiffs on 6th June 1996 and repairs were done on 30th April 1997 therefore the cause of action could only have accrued either on 6th June 1996 or on 30th April 1997 hence the 3 year limitation period could have lapsed by 6th June 1999 pursuant to Section 23(3) of the Limitation of Actions Act. The defence of limitation therefore is not available to the defendant.

11) The plaintiff also presented credible evidence to show that the defendant held over but did not pay for that period nor did it restore the premises to the condition they were at the time of commencement of the lease.

12) In the end, I am convinced that the plaintiff has proved its case to the required standards in civil cases. Consequently, judgment is entered in favour of the plaintiff and against the defendant as follows:

i. Mesne profits for the period between

1-8-95 to 31st April 1997 kshs.10,080,000/-.

ii. Refund for unpaid electricity and water. Kshs. 479,621/=

iii. Refund for costs of repair & painting Ksh. 3,029,640.65

Net total Ksh.13,589,261/=

iv. Costs of the suit.

I however decline to award the plaintiff damages for breach of contract and interest since no justification was laid in support of those prayers.

Dated, signed and delivered at Nairobi this 22nd day of November, 2019.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant