Igi Holdings Limited v Tropical Farm Management Kenya Ltd & another (Environment & Land Case 679 of 2012) [2023] KEELC 21876 (KLR) (21 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21876 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 679 OF 2012

LN MBUGUA, J

NOVEMBER 21, 2023

BETWEEN

IGI HOLDINGS LIMITED .... PLAINTIFF

AND

TROPICAL FARM MANAGEMENT KENYA LTD .... 1ST DEFENDANT

FREDRICK KIRUBI .... 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit *vide* a plaint dated September 20, 2012 and amended on April 26, 2019. The plaintiff contends that it had leased the suit land to the 1st defendant for a period of 10 years commencing January 1, 2002 and ending on December 31, 2011. Its case is that the 1st Defendant unlawfully sublet a farmhouse erected on the suit land to the 2nd Defendant and when the 1st Defendant's lease terminated, the 2nd Defendant refused to vacate the farmhouse.

2. On April 10, 2013, this court entered summary judgement against the 2nd Defendant and ordered that he be evicted from the suit property.

3. The Plaintiff prays for judgement against the Defendants jointly and/or severally for;

   a. Spent.

   b. Spent.

   c. General damages.

   d. Mesne Profits of Kes 1,846,356.16 for the period between 1.2.2012 and 14.5.2013 together with interest from 14.5.2013 until settlement in full.

e. The cost of this suit together with interest thereon at court rates from the date of filing suit until payment in full.

f. Such further relief as this Honourable court may deem just and fit to grant.

4. The 1st Defendant filed a statement of defence dated November 15, 2012 and amended on July 31, 2019. It admits to having entered into a lease with the plaintiff in respect of the coffee farm on the suit property commencing on 1.1.2002 to December 31, 2011. That the said defendant had then sublet the farmhouse erected on that land to the 2nd Defendant as an agent for the Plaintiff and would collect rent of Kes 20,000/= per month upto March 2012 and would hand over the monies to the Plaintiff. That when its lease with the Plaintiff ended, it requested the 2nd Defendant to vacate the farmhouse.

5. Vide this court's ruling of February 16, 2023, the matter was to proceed as an undefended claim against the 2nd Defendant, but as a defended claim against the 1st defendant. Further the court determined that any amended pleadings filed after April 10, 2013 would only apply to the 1st defendant.

6. The matter was fixed down for hearing on several occasions, where both defendants were represented, but eventually, they did not turn up on the date of hearing on 3.10.2023 even though the said date had been fixed by consent on 16.2.2023.

7. During the trial, the Plaintiff called 1 witness, PW1 Benson Nderi Iriga who is its director. He adopted his witness statements dated 20.9.2012 and 9.1.2020 as his evidence. He produced 6 documents in the Plaintiff's list of documents dated 20.9.2012 as P. Exhibit 1-6 and 1 document in another list dated 9.1.2020 as P. Exhibit 7.

8. His evidence is that in 2002, the Plaintiff leased its entire coffee farm located on the suit land in Thika to the 1st Defendant, then known as Green Coffee Limited, for a period of 10 years commencing 1.1.2002 and ending on 31.12.2011. That during the pendency of the said lease, the 1st Defendant sub-leased a farmhouse located on the said property to the 2nd Defendant for a perpetual and indeterminate period of time.

9. That on 31.1.2012, the lease between the Plaintiff and the 1st Defendant was determined absolutely and the coffee farm handed back to the Plaintiff. However, the 2nd Defendant refused to vacate the farmhouse situated in the suit property on the basis that he was a lawful tenant of the 1st Defendant. Thus, the 2nd Defendant illegally continued to occupy the farmhouse until 14.5.2013 when he vacated the same pursuant to the summary judgment entered herein on 10.4.2013.

10. He avers that as at 14.5.2013, the 2nd Defendant had been a trespasser on the Plaintiff's property for 468 days in which period the 2nd Defendant did not pay any rent whatsoever to the Plaintiff for the farm house.

11. He avers that in order to establish the rental value of the farmhouse, the plaintiff instructed the firm of Dominion Valuers who gave a rental value of kshs.120,000/= per month. Thus using the rate of Kes 120,000/= per month, the rental sum payable for the 468 days was Kes 1,846,356.16.

Determination

12. There is no controversy that the 1st defendant vacated the farm on 31.1.2012. Further, there was summary judgment entered against the 2nd defendant on 13.4.2013 giving orders of eviction against the 2nd Defendant, who thereafter vacated the suit house on 14.5.2013. The issue falling for determination is whether the plaintiff has any claim as against the 1st defendant and what is the quantum of damages payable to the Plaintiff by the 2nd defendant.

13. The provisions of section 107 and 109 of the *Evidence Act* stipulate that he who alleges must prove. See - *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* [2013] eKLR. In the case of *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the Court held that;

> "It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest."

14. It follows that even if the defendants were missing in action at the trial, the plaintiff was still obligated to prove its case.

15. The crux of the dispute relates to the occupation of the farm house by the 2nd defendant apparently on a sublease basis from the 1st defendant. The plaintiff avers that the 2nd defendant refused to vacate the house even after the lease between the plaintiff and the 1st defendant was over.

16. The letter dated March 29, 2012 at page 37 of plaintiff's bundle authored by PW1 states that;

> "The main house of which you were collecting rent on our behalf has not been transferred to us, nor have there been any rental proceeds on the same. The company is hereby demanding that you terminate the contract you had with your tenant and handover the same failing that, a commercial rate will have to be charged on your account with interests at the going market rate."

17. While the letter by the 1st defendant to the plaintiff dated 10.4.2012 at page 43 of the same bundle states;

> "Rental for main farm house: - we confirm that rent has been collected for the period January to March 2012 at the historical rate of kesh.20,000 per month. This rent has been credited to the account of Igi Holdings and is included within the attached reconciliation."

18. Nowhere in its evidence has the plaintiff refuted that the rent they were getting was Sh. 20,000 per month. Neither have they categorically denied the averments made in that letter of 10.4.2012 that they received the rent upto March 2012. What more, the contents of plaintiff's letter dated 18.4.2012 (page 57) at paragraph 6 challenging the lease of the 1st defendant to the 2nd defendant is not in tandem with plaintiff's letter of 29.3.2012 where they admit to rent being collected on their behalf in relation to 2nd defendant's occupation of the farm house.

19. What resonates from the above mentioned letters is that the 2nd defendant was in occupation of the house with the knowledge and acceptance of the plaintiff. To this end, the plaintiff's were receiving rent of sh. 20 000 per month.

20. The wording in the letter of 29.3.2012 that "a commercial rate will have to be charged" connotes a look into the future. That future appears to have fallen due via the letter dated 18.4.2012 where a figure of sh. 300 000 is mentioned as rent. The said figure is however not supported by any rent assessment document as at that time.

21. The rent assessment report was done on 25.4.2014, a year after the 2nd defendant had left the premises on 14.5.2013. Further, the said report is the one that triggered the amendments of the plaint dated 26.4,2019. However, this court in its ruling of 16.2.2023 had pronounced itself that the amendments would only apply to the 1st defendant. The report is therefore disregarded.

22. It is clear that even if the occupation of the farm house by the 2nd defendant was intertwined with the lease between the 1st Defendant and the plaintiff, the plaintiffs' silence on the issue of receiving rent upto March 2012 would place the month of trespass by the 2nd defendant to be April 2012. Thus the unlawful occupation of the farm house by the 2nd defendant runs for a period of one year, as he vacated the suit house in May 2013.

23. In view of the fact that the rent assessment report of 25.4.2014 has been disregarded, and considering that the plaintiff appears to have been receiving monthly rent of sh. 20 000 per month, then the court will use its own discretion to peg the rent due at the sum of sh. 60 000 per month which gives a sum of sh.720, 000 for the 12 months. This court decrees that this is the amount that the 2nd defendant should pay.

24. As for the claim against the 1st defendant, again the letters mentioned herein confirm that the plaintiff was part and parcel of the unholy alliance between the 1st and the 2nd defendants. Thus both the plaintiff and the 1st defendant share blame for entertaining the sublease which did not have clear terms. In that regard, I find that the plaintiff has no claim against the 1st defendant.

Final orders

25. The claim against the 1st defendant is dismissed and each party is to bear their own costs of the suit.

26. Judgment is hereby entered for the plaintiff against the 2nd defendant for the sum of Kes 720,000 plus cost, the same to be paid within 45 days failure to which, interests shall start to run at courts rates.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE