



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NUMBER 200 OF 2013

1. RUMBA KINUTHIA

T/A RUMBA KINUTHIA & CO. ADVOCATES

2. JOSEPH KARANJA WAMUGI

T/A BARLANY SERVICES & BONUS TRAVEL

3. JOSEPH OLOO KENYAGAH

T/A MILLENIUM INSURANCE BROKERS

***(Suing on their Behalf and on Behalf of 16 Others).* PLAINTIFFS**

VERSUS

NAIROBI CITY COUNTY. DEFENDANT

J U D G M E N T

The Plaintiffs herein who are nineteen (19) in number approached this Honourable Court by way of separate Plaints which were filed in High Court civil Case Numbers 200/2013 and 266/2011 which were consolidated and heard together.

The common bond between the Plaintiffs is that they are all tenants of the Defendant carrying out their respective businesses and having their offices at City Hall Annex a building owned by the Defendant. The Plaintiffs occupy different offices on different floors within the said Defendant's building.

The Plaintiffs avers that they have a periodic tenancy with the Defendant which said relationship is complimented by payment of quarterly rent. They aver that they have religiously met their respective obligations to the Defendant by making their quarterly rent payment without any default whatsoever. Some of the Plaintiffs have been tenants from the early 1980's to date and have continuously respected their obligations to the defendant's predecessors the City Council of Nairobi.

On or about 19th April, 2013 the defendant issued notices directing the Plaintiffs to vacate their offices within the defendant's aforesaid premises, by the 30th June 2013 and the reason given for the notice was that the defendant intends to put the said offices for its exclusive use.

The Plaintiff further avers that similar notices were issued on or about the 23rd May, 2011 by the defendant's predecessor and a similar reason was given that they wanted to have exclusive use of the said building. According to the Plaintiffs, the reason being advanced by the Defendant is a ploy of having them out of the said building in order that the Defendant can let it out at higher rates and in addition it's also meant to intimidate them into abandoning the existing suits that they have filed against the defendants.

That the defendant's intention is actuated by ill-will, malice and bad faith since none of the Plaintiffs have defaulted on their obligations to the defendant. Their contention is premised on the defendant's predecessor's action way back on the 29th June, 1993 when the Defendant evicted some private tenants who did not challenge the notice and instead of repossessing the premises vacated by these tenants, the defendant let them out to new tenants at higher and/or exorbitant rates.

It is the Plaintiff's contention that the purported notices to vacate are illegal/or unlawful and as such they should be nullified by this Honourable Court to forestall the occasion of injustice to them as they earn their living by carrying out their legal and honest businesses from the defendant's building.

The Defendant filed a statement of defence in HCCC No. 200 of 2013 on the 25th June, 2013 in which it has virtually denied all the contents of the plaint but admitted having issued the notices and justifies the same as having been necessitated by an urgent need for space to provide devolved services to the residents of Nairobi in line with the New Constitution.

The defendant denies that its actions were actuated by ill-will, malice and bad faith and denies all the particulars of ill-will and bad faith particularized in the plaint. It further denies the particulars of breach of tenancy and avers that the notice to vacate issued to the plaintiffs was legal and lawful and do not warrant nullification by the court.

The Plaintiffs filed a reply to defence on the 22nd July, 2013 wherein they basically joins issues with the defendant in its statement of defence and reiterates the contents of the plaint.

At the hearing of the matter one Joseph Karanja Wamugi testified as PW 1. He is the only witness on the part of the Plaintiffs and had been authorized by the Plaintiffs to act and plead on their behalf vide an authority to act dated 29th May, 2013 and filed in court the same date.

In his evidence, he told the court that he is a businessman dealing in real estate trading in the name and style of Barlany which business is based at city Hall annex. He is one of the Plaintiffs in civil suit number 266 of 2011. He has been a tenant at City Hall since 1993. On 28th June, 1993, the predecessors of the defendant gave them notices to vacate the premises because they wanted to use the same for their staff. On the 23rd May, 2013, the defendant's predecessor gave them another notice to vacate. On 20th April, 2013, the defendant issued the Plaintiffs with yet another notice and in all those instances the notices were issued, the Plaintiffs moved to court challenging the same.

The witness contended that the motive of the notices was to have them. Vacate the premises so that the defendant can increase the rent. The proof that allegation, he produced a letter that was tabulating the rent for one of the prospective tenant namely Family Bank that was leased out on the 12th September, 2013, at a much higher rent which amounted to Ksh.304,763/- per year. According to him they have paid rent faithfully and none of the tenants has been distressed for rent. He produced receipts for some of the tenants including one for Millennium Insurance dated 2nd April, 2013 for Ksh.26,142/- another one for Rumba Kinuthia & Co. Advocates dated 22nd February, 2013 for Kshs.39,498/- and for West Consult dated 16th January, 2013 for Ksh.30,000/-.

In cross-examination, he, the witness admitted that he did not produce any document showing that he is a tenant in the defendant's premises at city Hall Annex. He also admitted that he did produce a copy of Notice to Vacate issues to him and also had no receipt in his business name to proof that he was up todate

with the rent.

Regarding the internal memo to Family Bank Limited, he could not disclose the name of the officer who gave him the same or how he got possession of it. He admitted that he would not be surprised that they pay the lowest rents in Nairobi City.

On its part, the defendant called one witness namely Isaac Njuguna Nyoike who is a valuer and property manager working with the defendant. He confirmed to the court that the plaintiffs are periodic tenants and rent is paid quarterly. It was his evidence that the plaintiffs have the prerogative to terminate the tenancy and to do so, they required to give a three months notice and the same applies to the Defendant. According to him, the Defendant requires more space for operations as a result of the expansion of the Defendant after promulgation of the New Constitution following which various functions were devolved to it being that of fisheries, Livestock, Agriculture and the Betting Control.

In his evidence he told the court that he was not aware of any new tenants who have come to the premises though some tenants vacated in the year 2011. That there is no open space as 78% of the space is occupied by the defendant while 22% is occupied by private tenants. Though in his evidence he said that measures have been taken for purposes of renovating the offices and refurbishment of existing ones, the decision to let space from private owners has not been reached but it's being considered.

He testified that they have not revised rent since 1996 as attempts to do so were thwarted by the Plaintiffs by filing the present suit.

Parties filed their respective submissions which I have gone through and considered together with the evidence on record and the case law relied on. In my view the following are the issues for determination by this honourable court.

1. Whether the Defendant's notices to vacate were valid or they were activated by malice and in bad faith.
2. Whether the Defendant genuinely requires office space.
3. Whether it is in public interest for the Plaintiffs to vacate the Defendant's premises.

From the pleadings and the evidence on record, it is not in doubt that the Plaintiffs are tenants in the Defendant's premises at City Hall Annex in Nairobi.

It is also not in dispute that they are periodic tenants and that rent is paid quarterly and that some of the Plaintiffs have been tenants for the last 20 years. The cause of action herein arose from notices which were issued to the Plaintiffs to vacate the premises by the Defendant. The first issue for determination is whether the said notices were valid or whether they were activated by malice. I have perused the said notices and the only reason that runs across all of them is that the Defendant intends to exclusively utilize the offices.

The Plaintiffs on the other hand contends that the notices are a ploy to have them move from the premises in order that the Defendant can rent out the same at higher rates.

I will start by considering what a periodic tenancy is; Section 57 of the Land Act No. 6 of 2012 states that: -

“A periodic tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of the tenancy and shall expire on one of the days which rent is payable.”

In the case of **Aroko vs Ngotho & Another (1991) KLR** referred to by the Defendant the court held: -

“In the absence of a lease in writing then the lease was periodic tenancy in terms of section 46(1) (b) of the Registered Land Act which Periodic Tenancy was a month to month tenancy as

the rent was being paid monthly. Section 46 (1) (c) of the Registered Land Act. By the same Section such monthly tenancy would be terminated by a one month's Notice. Similarly, it appears that the second tenancy which took effect on 2nd June, 1989 was not in writing and so, it became a month to month tenancy terminable by one months Notice. I conclude, therefore, that the tenant has prima facie established that the tenancy was a month to month tenancy from 2nd June, 1989 was in writing and so, it became a month to month tenancy terminable by one month's notice. I conclude, therefore, that the tenant has prima facie established that the tenancy was a month to month tenancy form 2nd June, 1989 to 2nd June, 1990."

The Plaintiffs through PW 1 admitted that they were given a three months notice and the only issue that they seem to have with the Defendant is that it intends to rent out the premises to other tenants at a higher rent. They alleged that after the first notice was issued, some tenants vacated and the offices were rent to other tenants at a higher rent and to support this contention they produced an internal memo dated 12th September, 2013 written by the Chief Valuer One Nyoike N. I. to the Director of Legal Affairs and copied to the Internal County Secretary. The Plaintiffs alleged that the memo related to one tenant namely Family Bank and it sets out the terms of the tenancy and the rent payable to the Defendant. A quick look at the same memo reveals the following: -

1. That it is not done on the Defendant's letter head and it would be difficult for this court to verify the authenticity of the same.
2. Secondly, the letter does not disclose who the alleged tenant is.

The Plaintiffs through PW 1 did not even disclose the source of that letter and how it came to their possession. It is also noted that no lease was produced to support the memo which would be conclusive that the negotiation if any, culminated into a legally binding relationship between the Defendant and the alleged tenant and to that extent, I would not have any difficulties disregarding the memo as proof that the Defendant intends to let out the premises at higher rents.

The Plaintiffs admits that it is within their right to move out of the premises if they wished but upon giving the requisite notice to the Defendant and the same applies for the Defendant. It has not been argued on the part of the Plaintiffs that they will suffer any hardship if they vacated the Defendant's premises or that they would not be able to get alternative office space elsewhere.

In my view, and even if it were true that the Defendant intends to give out the space at higher rents, it is within Defendant's right to let out the premises to the highest bidder if it so wishes and in any event it makes good economic service.

The reason given by the Defendant for the termination of the tenancy is a valid one in view of its expanded mandate and increased work force and the evidence of DW 1 (Isaac Njuguna Nyoike) is clear on that. In his evidence, he testified that the County Government requires more space because with the promulgation of the New Constitution various functions were devolved to the County Government which includes Fisheries, Livestock, Agriculture and Betting Control among others. All these were created after Nairobi became a county and they require space for operations.

It was DW 1's further evidence that no new tenants have come to the premises since 1993 though some vacated in the year 2011 and due to increased need for office space, the Defendants is contemplating renting space from private owners. This piece of evidence attests to the fact that the Defendant genuinely requires office space and the allegation of malice and bad faith attributed to it by the Plaintiffs in giving the notices to vacate cannot be true and if there is any malice as alleged by the Plaintiffs they have miserably failed to proof the same.

The Defendant is a public body whose duty is to serve the Kenya Public and more particularly the residents of Nairobi while the Plaintiffs are individuals or entities who have rented office space for their own individual use. The court is in no way suggesting that the Plaintiffs interests should not be protected and/or are not valid but their reasons as advanced in their evidence on record for challenging the notices to vacate are not valid in law and in fact. All considered, it is the finding by this honourable court that the

Plaintiffs have failed to prove their case on a balance of probability and the court has no option but to dismiss the case with costs of the Defendant. However, the court takes notice of the fact that the Plaintiffs operates businesses from which they earn a living to sustain themselves and their families and they shall require time to look for alternative premises.

In that regard, this honourable court has given them period of three (3) months from today to vacate their respective premises upon expiry of which the Defendant shall be at liberty to take any legal action as it deems fit to give effect to the orders of this Honourable Court.

Dated, signed and delivered at Nairobi this 9th day of June 2016

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L NJUGUNA

JUDGE

In the presence of

..... ***for the Plaintiffs***

..... ***for the Defendant***