



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 667 OF 2014

THE SERVICES & SYSTEMS LTD..... PLAINTIFF

VERSUS

JAMES FRANCIS KARIUKI T/A NDARUGU MERCHANTS.....DEFENDANT

JUDGMENT

The plaintiff filed suit on 26th May 2014 seeking judgment against the defendant for:-

- (a) An order of eviction and vacant possession,
- (b) Kshs.535,780/67 on account of owned rent, VAT and interest charges on outstanding amounts and auctioneers charges,
- (c) Mesne profits from 1st July 2014,
- (d) Costs of the suit,
- (e) Interest on (b) (c) and (d) above at court rates.

The defendant having been served did not enter appearance within the prescribed time and the plaintiff applied for interlocutory judgment and the same was entered on 24th June 2014. The Defendant filed an application seeking to set aside the interlocutory judgment vide an application dated 15th July 2014 which application was fixed for hearing interpartes on 22nd July 2014. The application was dismissed by the court for want of prosecution on the part of the Defendant/Applicant.

The plaintiff fixed the suit for formal proof hearing on 3rd November 2014 when one **LINDA WANJIKU** an Assistant Legal Officer at PDM (Kenya) Ltd who are the duly appointed property managers of the property known as Trust Mansions on **L.R. NO. 209/2486** and **209/2487** Nairobi on behalf of the plaintiff company in terms of the property Management Agreement entered into between the plaintiff and PDM (Kenya) Ltd as per document "No1" on the plaintiffs bundle of documents **LINDA WANJIKU** testified as PW1 and adopted as her evidence her witness statement dated 26/5/2014 which has explained in detail all the documents contained in the plaintiff's bundle of documents filed with the

plaint.

The witness testified that the plaintiff was the owner of the properties **L.R. NO. 209/2486** and **L.R.NO. 209/2487** Nairobi known as Trust Mansion. The copies of the Grants/titles indicating Services and Systems Limited the plaintiff herein is the registered owner are exhibited at pages 24-41 in the plaintiffs bundle of documents. The witness further testified that Defendant was a tenant of the plaintiff in the suit premises pursuant to a lease agreement entered into between the plaintiff and the Defendant dated 26th July 2012 exhibited in the plaintiff's bundle of documents at page 42 and registered at the Lands office as IR-78346/31 and 78714/31 respectively on 13th December 2012. The duration of the lease was for a term of 6 years from 1st February 2012 to January 31, 2018. The rent payable during the 1st year of the term was Kshs.25,060/- per month payable quarterly in advance on the 1st day of January, April, July and October. The rent was reviewable at the end of each year of the term of the lease as provided under the lease.

The witness testified that as at the time of filing the suit on 28/5/2014 the Defendant owed a sum of Kshs. 535,780/67 to the plaintiff on account of rent arrears, VAT, and accrued interest as backed up by the invoices and other documents included in the plaintiffs bundle of documents. The make up of the outstanding amount is clearly outlined in the witness statement. The arrears as per the witness started running from December 2012 meaning the Defendant defaulted in rent payment from the last quarter of 2012. Towards the end of 2013 the Defendant made payment of Kshs.100,000/- for which credit has been duly given. The witness testified that they have levied distress on two occasions as per the documents contained in the plaintiff's bundle but the Defendant failed to regularize the rent payments which left the plaintiff with no other option but to institute these proceedings seeking the prayers set out in the plaint.

I have considered the evidence adduced by **LINDA WANJIKU** PW1, her witness statement dated 26th May 2014 and the plaintiffs bundle of documents produced in this suit as part of the evidence and observe as follows:-

- i. That the plaintiff is the registered owner of the properties described as **L.R.NO.209/2486** and **L.R.NO.209/2487** whereupon rental premises have been constructed.
- ii. That the Defendant was a tenant of the plaintiff in the premises pursuant to a lease dated 26th July 2012 which provided for payment of rent in the manner set out under schedule 5 of the said lease over a term of 6 years from 1st February, 2012.
- iii. That the Defendant was issued with invoices for accrued rent from time to time and as at 30th April 2014 a total sum of Kshs.535,780/67 was owing by the Defendant to the plaintiff on account or rent, arrears and service charge inclusive of VAT, Auctioneers charges and interest.

I have considered and reviewed the evidence by **Linda Wanjiku** her witness statement and the documents in support of the plaintiffs claim contained in the plaintiff's bundle of documents and I am satisfied the claim for Kshs.535,780/67 is well founded and I find the same proved on a balance of probability and I award the same to the plaintiff.

The plaintiff additionally prays for an order of eviction and delivery of vacant possession of the premises by the Defendant to the plaintiff. Equally I find this prayer against the Defendant to be merited. The Defendant by failing to pay the reserved rent on its due dates is in breach of the lease terms. The Defendant cannot expect that he can remain in the premises without paying rent. Under clause 6(i) of the lease the Landlord is permitted to repossess the premises from the Defendant in the event the rent falls due and remains unpaid for a period of seven (7) days from the date it fell due.

Clause 6(i) provides:-

“if the rent hereby reserved or any part thereof shall be unpaid for seven (7) days from the due date (whether formally demanded or not) or if any covenant agreement condition or undertaking on the tenant's part herein contained shall not be performed or observed or if

any Guarantor dispute their liability under the guarantee to be executed in favour of the Landlord pursuant to this lease and in any such case it shall be lawful for the Landlord at anytime thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon the term shall absolutely determine but without prejudice to any claim by the landlord in respect of any antecedent breach of any covenant or provision herein contained”.

In the premises therefore the rent having fallen due and being not paid (even after demand) the landlord is entitled to re enter onto the premises and to repossess the same whereupon the term of the lease would determine absolutely.

As relates the claim for mesne profits from 1st July 2014 I am satisfied the same are merited and I grant the amount payable as the rental from the period 1st July 2014 at the monthly rent of Kshs.30,323/- plus VAT payable on the amount. Upto and including the month of January 2015.

The upshot is that I enter judgment in favour of the plaintiff as against the Defendant in the following terms:-

(a) An order of eviction of the Defendant and delivery of vacant possession to the plaintiff of the office situate on the first (1st) floor of the Trust Mansions Building being the office delineated on the plan registered in the Registry of Documents, Nairobi in Volume D1 folio **44/645 file DXXXIII** and situated on the 1st floor of Trust Mansions building located in the County of Nairobi constructed on **L.R.NO.209/2486** and **L.R. NO.209/2487**.

(b) Kshs.535,780/67 together with interest from the date of filing the suit at court rates until payment in full.

(c) Mesne profits from 1st July 2014 at the rate of Kshs.30,323/- (plus applicable VAT) per month upto 31st January 2015 together interest at court rates from the date of this judgment.

(d) Costs of the suit with interest at court rates.

Judgment dated, signed and delivered this.....**30th**.....day of... **January**.....2015.

J. M. MUTUNGI

JUDGE

In the Presence of:

.....for the Plaintiff

.....for the Defendants