



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 74 OF 2014

SPRINT PROPERTIES LIMITED.....1ST PLAINTIFF

SAPNA DISTRIBUTORS LIMITED.....2ND PLAINTIFF

- VERSUS -

DENNIS MANWA MABEYA T/A MANWA MABEYA & CO. ADVOCATES....DEFENDANT

RULING

1. The application before me is for the striking out of the Defence, so that the court can thereafter enter judgment in favour of the plaintiff, as prayed in the plaint.
2. The Defendant, **DENNIS MANWA MABEYA Trading AS MANWA MABEYA & CO. ADVOCATES** was sued for the sum of Kshs. 11,862,500/-.
3. It was the contention of the plaintiffs, **SPRINT PROPERTIES LIMITED** and **SAPNA DISTRIBUTORS LIMITED**, that the defendant collected rents for and on behalf of the plaintiffs.
4. The plaintiffs' claimed ownership of four properties, being **MOMBASA/BLOCK 1/300; MOMBASA/BLOCK 1/306; MOMBASA/BLOCK 1/307; and MOMBASA/BLOCK 1/441**.
5. At all material times, the tenant at those properties was **BAHARI (T) COMPANY LIMITED**. The rent was Kshs. 205,000/- per month, for the three (3) warehouses which **BAHARI (T) COMPANY LIMITED** had leased.
6. On 3rd December 2007, the plaintiffs issued a notice to the Tenant to vacate the 3 warehouses. However, the tenant declined.
7. The Tenant filed suit at the Business Premises & Rent Tribunal (BPRT), Mombasa, challenging the validity of the Notice to vacate.
8. Whilst the case before the BPRT was pending, the Tenant deposited the rent in court. The total amount which had been deposited in court, as at 31st May 2010, was Kshs. 4,650,100/-.
9. Between June and December 2010, the Tenant paid a total of Kshs. 1,328,600/- directly to the defendant.

10. On 16th December 2010, the Business Premises & Rent Tribunal (**BPRT**) allowed the plaintiffs' Notice.

11. The plaintiffs' case was that the defendant collected further rents from the Tenant as follows;

“a) January to December 2011 Kshs. 2,277,600.00/-

b) January to December 2012 Kshs. 2, 277,600/-.

c) January to July 2013 Kshs. 1,328,600.00/-.

12. When those sums are added to the sum of Kshs. 4,650,100/- which had been deposited in court, and the sum of Kshs. 1,328,600/- which the defendant received in respect to the period between June and December 2010, the full total comes to Kshs. 11,862,500/-.

13. The defendant filed a Defence denying the claims.

14. It is then that the plaintiff brought the current application, to strike out the Defence.

15. In support of the application, the plaintiff has exhibited a letter from the defendant, dated 4th April 2013. By that letter, the defendant acknowledged receipt of Kshs. 10,533,900/- as at 31st December 2012.

16. The defendant did not respond to the plaintiff's affidavit; and in particular, the letter setting out the figures adding up to Kshs. 10,533,900/-.

17. In the result I find and hold that the defendant has duly admitted receiving the said sum of money, which was rent payable to the plaintiff. Accordingly, I now enter judgment – on – admission for that amount.

18. I also hold that he defendant received the further sum of Kshs. 1,328,600/- between January 2013 and July 2013.

19. I therefore enter judgment in favour of the plaintiffs for the sum of Kshs. 1,328,600/-.

20. In total, judgment is entered in favour of the plaintiffs, against the defendant for Kshs. 11,862,500/-.

21. The plaintiff is also awarded the costs of the application dated 23rd June 2014, together with the costs of the suit.

22. The Decretal amount will attract interest at court rates from 31st July 2013 until payment in full. Over and above the said interest which is in respect to the whole sum of Kshs. 11,862,500; the defendant will pay interest at court rates on the sum of Kshs. 10,533,900/- from 31st December 2012 until 31st July 2013.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of November 2014.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

.....for the 1st Plaintiff

.....for the 2nd Plaintiff

.....for the Defendant

Collins Odhiambo – Court clerk.