



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 636 of 2012

THE JUBILEE INSURANCE CO. LTD.....APPLICANT

-VERSUS-

AKAMBA PUBLIC ROAD SERVICES LTD

(IN LIQUIDATION).....RESPONDENT

JUDGEMENT

The Plaintiff by a plaint dated 25th September and filed in court on 26th September 2012 instituted this suit against the Defendant (in liquidation) pursuant to leave granted by the court on 19th September 2012 in HC Winding up Cause NO. 11 of 2012 consolidated with HC Winding up cause No. 12 of 2012. The plaintiff by the plaint sought judgment against the Defendant for:

- a) An order of recovery/vacant possession of the premises allowing the plaintiff to enter and reposes shop No. Three (3) located on the ground floor of jubilee insurance House built on L.R. No. 209/3526 held under a grant registered at the Land Title Registry as I.R. 7440/1 (“the Premises”);
- b) An order directed to the Registrar of Titles, Nairobi Registry to cancel and/or delete that entry on the Register, held at the Land Titles Registry – Nairobi Registry, which indicates the Defendant as a L3essee of shop No. Three (3) located on the ground floor of Jubilee Insurance House L.R. No. 209/3526 (entry – I.R No. 74440/683);
- c) Costs of this suit.

The plaintiff effected service of the plaint and summons to enter appearance on the official receiver on 31st October 2012 and on the Defendant by way of registered post care of the postal address of the Defendant under a certificate of posting on the 7th November 2012. An affidavit of service was prepared by one Phemas Omwola Ndengu on 8th November 2012 and filed in court on the same date.

The defendant did not enter an appearance or file any defence and on 27th November 2012 the Deputy Registrar directed the plaintiffs to fix the suit for formal proof. The matter came before me for formal proof hearing on 1st February 2013. Both the official receiver and the defendant had been served with the hearing notice for the formal proof as per the affidavit of service filed on 2nd January 2013 but there was no attendance by either.

On behalf of the plaintiff Ms Festus Eroba testified and adopted her witness statement signed and dated 25th September 2012 and filed in court on 26th September 2012. It is the evidence of the plaintiff that the

defendant was the plaintiffs tenant in the Plaintiffs building Jubilee Insurance House, located in Nairobi being L.R. No. 209/3526 held under a grant registered at the Land Titles Registry as I.R. No. 7440/1. The plaintiffs vide a lease agreement dated 18th August 2010 leased to the Defendant shop No. 3 on the ground floor of Jubilee insurance House on the Terms and Conditions Act out in the Register lease.

It is the evidence of the Plaintiff as tendered by the Plaintiffs said witness that he Defendant fell into arrears in payment of rent and in May 2012 the Plaintiff levied distress on the Defendants moveable assets to recover rent arrears amounting to Kshs. 371,693.90. The distress realised a sum of Kshs. 25,000/= out of which Kshs. 23,732/= was applied to cover the auctioneers fees and costs. The Defendant persisted being in default and as at 30th July 2012 the Defendant owed the plaintiff the sum of Kshs. 1,744,620.50/= in unpaid rent and service charge being inclusive of VAT.

It is the contention of the plaintiff that clause 5 (a) of the lease entitled the plaintiff to repossess the lease premises if the Defendant was in default of rent payment and in furtherance thereof the plaintiff instructed its Advocates Alls Dally and Figgis Advocates to serve the Defendant with a forfeiture notice which the Advocates duly did on 30th July 2012.

The Plaintiff acknowledges that winding up proceedings have been commence against the Defendant in HC Winding up Cause No. 11 of 2012 and 12 of 2012 and that the court has appointed the interim liquidator to take into his custody and control all those immovable as well as the defendants movable assets but the plaintiffs present suit only seeks the plaintiff to be put in possession of its property and does not seek to obtain preference over the other creditors of the Defendant. Specifically the plaintiff does not seek payment of the rent in arrears and only seeks to be allowed to repossess its property which will not prejudice the interest of any creditors but will rather curtail the escalation of rent does as against the Defendant.

I have considered the suit by the plaintiff and the evidence tendered and I am satisfied the suit for the recovery of possession which the plaintiff was at any rate entitled to repossess once default in the payment of the reserved rent occurred is well founded. I find that the defendant was a tenant of the plaintiff and I hold that the defendant was in breach of the lease terms which entitled the plaintiff to repossess the premises occupied by the defendant and further seek a forfeiture of the lease.

I accordingly enter judgment in favour of the plaintiff as against the defendant in terms of prayers 9 (a) and (b) of the plaint and award the costs of the suit to the plaintiff.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the Plaintiff/Applicant
..... for the Defendant/Respondent