



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

ENVIRONMENTAL & LAND CASE 234 OF 2011

APPOLOS HIRAM MUNA.....PLAINTIFF

VERSUS

JOSEPH KARANJA GITAU.....DEFENDANT

RULING

APPOLOS HIRAM MUNA (landlord), and **JOSEPH KARANJA GITAU**, (tenant), entered into a lease over the premises known as **LR NO. 209/525/12** situated along Dubois Street in Nairobi on 7th September, 1999 (lease). The lease was for a period of twelve [12] years with effect from 1st April, 1999 to 31st March, 2011. The landlord claims that the lease expired on 31st March, 2011, by effluxion of time and the tenant's request for extension of time was not accepted. Further, the rent for the premises was increased to KShs.153,000/= per month from 31st March, 2011, being a twenty per cent [20%] increment after every two years, thus the landlord's claims for *mesne* profits at the rate of KShs.183,600/= per month from 1st April, 2011, until delivery of vacant possession.

By a plaint filed in court on 25th May, 2011, the landlord has sought for the orders of eviction and delivery of the premises in vacant possession and also for *mesne* profits. On 8th July, 2011, the landlord filed a notice of motion under the provisions of **Order 36 Rule 1 (1) (b), (2) and 51 of the Civil Procedure Rules** seeking for summary judgment be entered against the tenant as prayed in the plaint. This application was supported by the grounds stated on the body thereto. These grounds are elaborated in greater detail by the matters deposed to in the landlord's affidavit sworn on 7th July, 2011.

This application was opposed; the tenant filed a defence in which he claims that the landlord unlawfully and without any justifiable cause refused to renew the lease for a further term of five [5] years and three months [3] as provided for under *paragraph 2 (i)* of the lease. Further, the extension of the lease upto 31st August, 2011 reduced the tenancy into a controlled "tenancy" within the meaning of **Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act, Cap 301 of the Laws of Kenya**, thus his tenancy can only be terminated in accordance with the procedure set out in the Act.

In response to the notice of motion, the tenant swore a replying affidavit on 22nd September, 2011, which sets out the steps that were taken to renew the lease and how the lease was extended upto August 2011 as per the terms tabulated in the landlord's letter dated 28th June, 2006.

Both counsel for the landlord and tenant filed written submissions in regard to the notice of motion and they also highlighted these submissions during the hearing. I will refer to these submissions in the course

of my analysis of the issues raised in this application. This is an application for summary judgment. It is trite law that if a plaintiff's claim is a liquidated one and there is no reasonable defence then the claim can be allowed summarily. However, if the defence raises triable issue(s), the defendant must be given leave to defend, see the case of **OSODO VS BARCLAYS BANK INTERNATIONAL LTD {1981} KLR 31.**

It is common ground that the landlord and tenant entered into a lease agreement on 7th September, 1999, for a period of twelve [12] years. The only dispute is whether the landlord had failed to comply with **clause 2 (i) of the lease** which provides:

“In view of the aforesaid the extended lease to 12 years shall have taken into account the costs/expenses of such fixtures and/or installations or additions expended by the tenant and renewal of this lease for a further term shall be requested by the tenant in the normal manner and shall not be unreasonably withheld.”

The tenant claims that he started the process of seeking a renewal of the lease by a letter dated 28th September, 2010. This was followed by a meeting with the landlord, where the landlord and tenant agreed the lease would be extended from September 2010 to August 2011 at a rent of KShs.145,000/= per month. According to the tenant, the refusal by the landlord to renew the lease as per the above clause was unreasonable. I think this allegation to me raises a triable issue. The other triable issue that I find in this matter is whether the lease expired by effluxion of time and thus the tenant became a protected tenant whose tenancy can only be determined according to the provisions of Cap 301.

For the aforesaid reasons, the landlord cannot be entitled to summary judgment. Those issues are triable and they entitle the tenant to an unconditional defence.

However, as the dispute involves the lease, the tenant must continue paying the rent. This case may also be fast tracked in the interest of justice.

Ruling read and signed this 30th day of March, 2012.

MARTHA KOOME
JUDGE OF APPEAL

Note:

This application was heard and concluded on 7th December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.