



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NO. 290 OF 2011

EMMY BUNEL.....
PLAINTIFF

VERSUS

CHRISTINE WANGARI MUNGA1ST
DEFENDANT

DAVID MWAURA.....2ND
DEFENDANT

RULING

Notice of Motion dated 25/1/2012 seeks for summary judgment against the plaintiff for the sum of Ksh.1,025,700/= together with interest at court rates and mesne profits as prayed in the counter claim.

On the grounds that the defendants are lawful owners of suit property having purchased plot No. Nairobi/Block 34/160 unit 35 at an agreed price of Kshs.3,216,000/= (suit property). The title was registered in their names. The title is not subject to any challenge and therefore it is indefeasible.

The plaintiff has been in occupation of their property as tenant since 2008 without payment of rent at the rate of Ksh.30,000/= per month. Levy of distress has not been sufficient to satisfy arrears and the claim is now Kshs.1,025,700/=. The supporting affidavit is sworn by first defendant who exhibits the title.

On 19/4/2011 she instructed advocate to send a demand letter. Auctioneers were appointed Jenen Marpa Agencies by a letter dated 27/5/2011. The goods attached fetched only Kshs.24,300/=

In reply the plaintiff states that she moved into the premises in 1995 but has never received notice that the property has ever changed hands. The sale agreement indicated that the property was sold in vacant possession but did applicant ensure property was in vacant possession? The said transaction was tainted with fraud.

She admits that she has been in occupation of the suit property but not as a tenant. She did not receive this letter from auctioneers. The letter dated 19/4/2011 was received from Wetangula advocates which was responded to as the letter dated 13/7/2011. Also see EB 2 (b) and 2 (c). She filed this suit in attempt to stop the attachment but court did not make any orders.

She denies being in arrears of rent and alleges to be in process of buying the suit property. HCC Civil Suit in Nairobi 152 of 2008 meant to determine the issue of ownership of suit property is pending ruling on notice. See Exhibit.

In reply it is shown that the defendant is not a party to that suit.

The respondent cited the case of **Starline General Suppliers Ltd –vs- Discount Cash & Carry Ltd** and case of **National Industrial Credit Bank Ltd –vs- Lucy Wakonyo Njiru**. Upon considering the submissions of the parties I note that the 1st defendant is registered as joint holder with David Mwaura as unit owner of property Nairobi/Block 34/160/35. Title Deed was issued on 16/11/2008 and that a charge was registered in favour of Stanbic Bank (K) Ltd.

The plaintiff does not show any title but admits her occupation in the premises since 1995 she has never paid for the use of the property since the defendant purchased the same. The applicant admits having levied distress when only a small amount was recovered.

The suit pending namely HCCC No.152 of 2008 is not against the 1st defendant and she is not party to it. This suit has been pending since 2008. The court does not believe that she was not aware that property had changed hands. She also does not disclose that she was paying for the use of the property.

The tenancy is a term used to describe the relationship between landlord and the person who he has allowed to enter and occupying his land under a lease. In this case it appears that the defendants purchased the property with the plaintiff in possession. No agreement was entered into but the defendants expected the respondent to pay rent as the property became registered in their names. However in case where there is no agreement by landlord the agreement is lawful but exists without landlords assent. No rent is payable but the tenant is liable to pay compensation for his use and occupation of the land. The tenancy may be terminated at any time.

In this case the defendants have assessed the payment for use of property at Kshs.30,000/= per month and the landlord is entitled to such amount since the property passed in title to them. Regarding the allegation that a suit to determine the ownership of the property is pending it is clear that the defendants title is clear and no challenge is existing.

In the circumstances I find that the sum of Kshs.1,025,700/= to be reasonable compensation for the use of the suit property at rate of Kshs.30,000/= per month.

I allow application and grant judgment in the sum of Kshs.1,025,700/= only.

On the issue of eviction I order that the plaintiff do give vacant possession of the suit property forthwith by expiration of 30 days from today failing which eviction shall be enforced.

Orders accordingly.

Dated and Delivered at Nairobi this 3rd day of May, 2012

J.N. KHAMINWA
JUDGE