



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 186 of 2012

Editorial Summary

1. *Court Vacation*
2. *Civil Division*
3. *Subject of main suit*

LANDLORD/TENANT

- 3.1 *LR No. 1/1161 Lenana Road
Apartment No. C5, 2nd floor,
Block C*
- 3.2 *Lease between parties dated 1st September 2008
to 30th August 2009 Ksh. 95,000/- paid quarterly
per Ksh. 285,000/-*
- 3.3 *Increase of rent after the 1st years to Ksh. 105,000/-
per month after the 2nd year to Ksh. 125,000/-
per month.*
- 3.4 *No written lease agreement.*
- 3.5 *Allegation by landlord that tenant has absconded and
locked the premises.*
- 3.6 *Premises is wasting. No electricity, no water.*
- 3.7 *Landlord files suit on 24th April 2012.*

- 3.8 *Application dated Notice of Motion 19th April 2012
filed 24th April 2012 for summary judgment.*
- 3.9 *Application to serve by alternative services granted.
Onyancha J 4th May 2012.*
- 3.10 *Service of application during court vacation
Ang'awa J (13th August 2012).*
- 3.11 *Interparte hearing advocate absent – received
under protest.*
- 3.12 *Hearing 16th August 2012 at 11.00 a.m. summary
judgment application interparte.*
- 3.13 *Both advocates present.*

4. *Application 19th April 2012*

Arguments by applicant

- 4.1 *The plaintiff owns of property Block C
LR 1/111/61 Lenana Road.*
- 4.2 *Defendant failed to pay rent and has disappeared
from premises from 1st October 2011.*
- 4.3 *Arrears of rent.*
- 4.4 *Rent due and owing.*

Arguments by Respondent

- 4.5 *Issue between parties is the amount of rent
payable.*
- 4.6 *The sum is Ksh. 95,000/- per month.*
- 4.7 *Deposit held to cater for electricity and water.*

5. *Findings:*

- 5.1 *Lease agreements must be in writing.*
- 5.2 *Proof of only lease agreement of 1st September*

2008.

gentleman's 5.3 *Oral lease agreement increase of rent, a
agreement.*

5.4 *Proof required in evidence.*

6. *Case Law:*

7. *Advocates :*

Advocates for plaintiff i) *C.M. Mshweshwe instructed by M/s Muthaura Mugambi & Co*
defendant ii) *S.G. Thuo instructed by M/s Muema & Associates for*

STEPHEN GACHUKI KIMANI PLAINTIFF

VERSUS

GEOFFREY TUSIME DEFENDANT

RULING

I INTRODUCTION

1. The parties in this civil suit are related to each other as landlord and tenant Stephen Gachuhi Kimani, the landlord and plaintiff herein filed suit against his tenant Geoffrey Tusime, the tenant herein on the

24th April 2012 (dated the 19th April 2012.)

2. An application filed on the 24th April 2012 and dated 19th April 2012 sought summary judgment under Order 36 rules 1(1) (a) and 1 (1) (b) and (2) of the Civil Procedure Rules 2010 Section 1A, 1B and 3A of the Civil Procedure Act and all enabling provisions of the law.

3. This rule reads:-

3.1 All suits where a plaintiff seeks judgment for:

a) A liquidated demand with or without interest or

b) The recovery of land, with or without a claim for rent or merse profits, by a landlord from a tenant whose term was expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser.

When the defendant has appeared but not filed a defence, the plaintiff may apply for judgment for the amount claimed or part thereof, and interest or for recovery of land and rent or merse profits.

3.2 The application shall be supported by an affidavit both of the plaintiff or of some other person who can swear positively to the facts verifying the cause of action and any amount claimed.

3.3 Sufficient notice of the application shall be given to the defendant which notice shall in no case be less than seven days.

4. The landlord/plaintiff is the proprietor of apartment number C5 situated on the second floor of Block C, a building erected on

LR No. 1/1161 along Lenana road Nairobi. He had entered into a lease agreement with his tenant on the 1st September 2008.

The tenant agreed to pay a rent of Ksh. 95,000/- per month payable per quarter at the rate of Ksh. 285,000/-. This lease was for one year and was paid regularly as required.

5. The effect of the lease was that the tenancy relationship was uncontrolled and did not fall under the Rent Restriction Tribunal.

6. When the year was up, the landlord did not enter into another lease agreement. Instead he verbally agreed with the tenant that the rent would increase to Ksh. 105,000/- per month to be paid quarterly. The tenant paid this sum exclusive of water and electricity bill.

7. The next following year the landlord verbally increased the rents to Ksh. 125,000/-. The tenant struggled to pay this. The water and electricity bill went into arrears.

8. According to the landlord, if any rent remains in arrears for 7 days, the tenant must pay 2% interest calculated above the Central Bank of Kenya's Treasury Bill.

9. According to him, the tenant absconded. The house/apartment is wasting. (He did admit he placed a second lock onto the tenant's lock and would not allow him to remove his items.)

10. When the landlord filed suit on 24th April 2012, he stated that he wished to have five items given to him by the courts. These are:

“10.1 Summary judgment for rent arrears of Ksh. 875,000/- between October 2011 to April 2012 together with interest 2% above the Central Bank of Kenya's Treasury Bill.

10.2 Summary judgment for rent arrears for the sum of Ksh. 375,000/- being 3 months rent in lieu of notice with interest thereon at court's rates from the date of filing suit until payment in full.

10.3 Summary judgment for Ksh. 61,728/07 being the arrears of electricity and water bill and the reconnection charges in respect thereof with interest thereon at court rates from the date of filing suit until payment in full.

10.4 Summary judgment for vacant possession of the suit premises.

10.5 Merse profits from the date of filing suit until the date of order of re-entry and repossession is granted to the plaintiff”

II APPLICATION 19TH APRIL 2012

11. These prayers are sought because the tenant has entered appearance through his advocate but has filed no defence.

12. The landlord applicant states he longer wants his tenants. He asks that apart from the above he wants the premises renovated and sum due to him be paid.

13. As far as he was concerned the tenant had disappeared.

14. In reply, the tenant stated that the issue between the parties is that of the actual sum due of rent to be paid. According to the tenant this should be Ksh. 95,000/-. This is all a matter of evidence and as such he prayed the said application be dismissed.

III FINDINGS

15. A lease agreement between the landlord and tenant is a contract. It must be in writing. The landlord was only able to display one lease agreement duly signed with effect from 1st September 2008 to

August 2009.

16. He admits that thereafter the lease agreement had been orally made. The rents were duly increased and paid.

17. This was an oral lease agreement that amounted to a “gentleman’s agreement” that cannot be enforced by a court of law. This does not mean that the tenancy becomes a month to month tenancy. No, the tenancy is still a year to year tenancy.

18. How much rent is due is therefore a matter of evidence. Proof is accordingly required.

19. I would accordingly hold that the application dated 19th April 2012 be and is hereby dismissed. That the defendant is granted leave to file his defence and have access to his apartment at the rate of

Ksh. 95,000/- rent per month.

20. That this matter do proceed to full trial upon compliance with the pretrial procedure provided by the new 2010 Civil Procedure Act and Rules.

21. There will be costs to the defendant/tenant.

DATED THIS 21ST DAY OF AUGUST 2012 AT NAIROBI

M.A. ANG’AWA

JUDGE

Advocates:

i) *C.M. Mshweshwe instructed by M/s Muthaura Mugambi & Co Advocates for plaintiff*

ii) *S.G. Thuo instructed by M/s Muema & Associates for defendant*