



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 171 of 2012

FRANCIS NJUGUNA ITUBIA..... PLAINTIFF

VERSUS

1. IBRAHIM MUCHERU WAHOTHI

2. ANN NYATHIRA MUCHERU..... DEFENDANTS

R U L I N G

1. The Plaintiff had a written lease with the Defendants upon the suit premises, **Shop No. 29, Ground Floor of Gatukuyu House on L.R. No. 209/136/168, Kirinyaga Road, Nairobi**. The lease was for 5 years and 3 months commencing 1st November 2006. Under the lease the Plaintiff was to pay a monthly rent of KShs 15,000/00 for the first 2 years and 6 months and then KShs 18,000/00 per month for the remainder of the term. The lease expired on 29th February 2012.

2. The lease contained a renewal clause, Clause 7, in the following terms -

“7. If the Lessee shall at the expiration of the term hereby created be desirous of obtaining a further lease of the said premises and shall signify such desire by notice in writing delivered to the Lessor Three Calendar Months at least (which time shall be of essence) before expiration of the term hereby created, and if the Lessee shall have duly paid the rent herein reserved and have duly performed and observed all the covenants and agreements herein contained or implied, both parties shall enter into negotiation and upon agreement by the parties a new lease will be drawn in order to commence another term of five years and two months.”

3. The Plaintiff has pleaded in his plaint dated 10th April 2012 that he notified the Defendants, prior to expiration of the lease, of his intention to renew the lease for a further period subject to negotiated terms; that before any negotiations could be concluded he was served with a letter of offer to renew the lease at a monthly rent of KShs 50,000/00; and that the Defendants have refused to negotiate on the monthly rent.

The Plaintiff therefore seeks the following main reliefs -

(i) **“An order restraining the Defendants...from interfering with (his) quiet occupation of the (suit) premises...and further from evicting (him) therefrom.”**

(ii) **An order to assess a fair monthly rent for the suit premises.**

4. Together with the plaint the Plaintiff filed notice of motion dated 10th April 2012 seeking two main orders –

(i) That pending hearing and determination of the suit the Plaintiff do “continue paying his monthly rent of KShs 15,000/00 as and when the same falls due to the Defendants’ provided bank account” or in the alternative deposit the same in court “for collection by the Defendants”.

(ii) That the court do assess reasonable monthly rent payable upon the suit premises.

5. This application is the subject of this ruling. It is stated to be brought under **Order 40, rules 1, 2, 3 and 4 of the Civil Procedure Rules** (the **Rules**). There is a supporting affidavit sworn by the Plaintiff.

6. The Defendants have opposed the application by a replying affidavit (sworn by the 2nd Defendant) filed on 18th June 2012. Some of the grounds of opposition taken are -

(i) That the Plaintiff never expressed his intention to renew the lease as provided.

(ii) That the monthly rent of KShs 50,000/00 is the market rate for the suit premises.

7. The Defendants also filed a statement of defence denying the Plaintiff’s claims.

8. The application was canvassed by way of written submissions, which I have read and considered. No authorities were cited.

9. The Plaintiff has not annexed to his supporting affidavit any notice in writing signifying his desire to renew the lease as provided for in Clause 7 of the lease agreement between the parties. Without such notice, he did not express his desire to renew the lease. In any event, there were no negotiations leading to any agreement between the parties for a new lease. The Plaintiff’s lease expired on 29th February 2012, and he would appear, *prima facie*, to be a trespasser in the premises because the Defendants did not agree to his continued occupation of the premises. They have not accepted any further rent from him though the Plaintiff has continued to deposit some money in their bank account without their consent.

10. It is not the function of this court to make contracts for parties, and it would have no jurisdiction to assess reasonable rent for the suit premises. If there is a controlled tenancy between the parties (and I am not saying that there is) under the **Landlord and Tenant (Shops, Hotels & Catering Establishments) Act, Cap 301**, then it would be the function of the **Business Premises Rent Tribunal**, not this court, to assess reasonable rent.

11. The Plaintiff’s application (and possibly the suit) is entirely misconceived and has no merit. It is hereby refused and dismissed with costs to the Defendants. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF DECEMBER 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2012