



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CIVIL APPEAL NO. 501 OF 2003**

**HENRY INYIMIRI SHIBIDI.....APPELLANT/ORIGINAL  
PLAINTIFF**

**VERSUS**

**JOHN MIRURU GATHUNA.....RESPONDENT/ORIGINAL  
DEFENDANT**

*(Being an appeal from the Judgment and decree of Hon. P. Wekesa Esq, Resident Magistrate  
on 22<sup>nd</sup> July 2003 in Civil Case No. 7206 of 2002 at Milimani Commercial Courts at Nairobi)*

**J U D G M E N T**

**I. BACKGROUND**

1. The appellant/original plaintiff's relationship with the respondent original defendant is one of landlord/tenant. I shall refer to the appellant as the tenant and the respondent as the landlord.
2. Sometime in the year 1995, the tenant ran a business premises, described as a "jua kali business". This is in the informal sector where he organized to have an eating place and related business. His rent was at first Ksh. 750/= per month. This steadily rose to Ksh. 850/= per month, Ksh. 950/= per month and finally Ksh. 1,100/= per month.
3. On the material day 11<sup>th</sup> August 2000, he went to his business premises and found it had been locked. His items distressed after he had been issued with a one day notice. The landlord then issued a seven days notice on the 24<sup>th</sup> August 2000.
4. The plaintiff suffered damages. He earned a profit of Ksh. 350/- per day.
5. He also stated how he was abused, as a result of the said exchanges with the defendant in front of others and in public.

6. Being aggrieved, the said tenant filed a suit seeking orders for damages, costs of the suit on 13<sup>th</sup> September 2002.
7. The defendant on the other hand filed defence denying the allegation. He had a counter claim stating that Ksh. 4,700/= as sums due and owing as arrears of rent and storage charges.
8. The Hon. Trial Magistrate on hearing both parties dismissed the suit filed by the plaintiff as having not been established and dismissed the counter claim on 22<sup>nd</sup> July 2003.
9. The tenant filed appeal on 8<sup>th</sup> August 2003. The landlord did not cross-appeal but stated that he supported the decision of the subordinate court.

## II APPEAL

10. The tenant stated in his memorandum of appeal that the Hon. Magistrate erred in law and fact.

*10.1 ... by completely misapprehending the pleadings.*

*10.2 ... failed to appreciate the evidence*

*10.3 ... failed in judicial value*

*10.4 ... failed to consider the claims for trespass*

*10.5 ... failed to consider claim for the plaintiff's goods.*

*10.6 ... failed to recognize the law on defamation*

*10.7 ... failed to appreciate the loss of income*

*10.8 ... failed to establish whether the seized goods were lawful or not*

*10.9 ... failed to consider exemplary award*

11. The appellant/tenant prayed that the appeal be allowed and this court uphold the appellant's case.

12. The respondent/landlord in reply stated that the court came to the correct decision. There was no proof to support the tenant's case. The appeal be disallowed. The tenant has rent arrears.

### III FINDINGS

13. The issue before the party is that of landlord/tenant. It was the defendant's defence that the tenant was already in the wrong court and was not entitled to the damages prayed for.

14. The Hon. Magistrate and the respondent recognized this relationship.

15. The landlord on levying distressed of the goods of the tenant, implies that he recognized this relationship.

16. The tenant was no longer in possession of the premises. It is therefore his decision to sue for damages which he is entitled to do. By so doing it means that the said Hon. Magistrate had jurisdiction to entertain the said matter.

17. I would accordingly hold that the Hon. Magistrate erred in not adequately appreciating the appellants case in this matter.

18. In tort, where a party, in this case the tenant establishes a case but is unable to quantify the damages, the court is permitted to award "*nominal charges.*"

19. To this end, the court would allow the appeal set aside the judgment of the subordinate court and substitute it with the following award. (The plaintiff original asked for Ksh. 1 million) Ksh. 300,000/= as damages.

20. There was no counter appeal on the counter claim that had been dismissed. I make no findings therein.

### IN CONCLUSION

21. This appeal is allowed. The judgment of the subordinate court is accordingly set aside and substituted with a nominal award of Ksh. 300,000/=

22. There will be interest on this sum from the date of the judgment of the subordinate court case 22<sup>nd</sup> July 2003.

23. There will be costs to the appellants in this appeal, costs to the original plaintiff in the subordinate court case.

DATED THIS 20<sup>TH</sup> DAY OF DECEMBER 2011 AT NAIROBI

**M.A. ANG'AWA**  
**JUDGE**

Advocates :

- i) N. Harun instructed by M/s Nelson Harun & Co Advocates for appellant/plaintiff
- ii) F.S Mwaura instructed by M/s Mwaura Shairi & Co Advocates for respondent/ original defendant

### **Editorial Summary**

- 1. Civil Appeal
- 2. Subject of Subordinate Court Case

#### *TORT LANDLORD/TENANT*

- 2.1 Unlawful eviction from business
  - 2.2 Tribunal
  - 2.3 Landlord files counter claim for  
Ksh. 44,000/= rent
  - 2.4 Hon. Magistrate holds that no proof has been  
Established by either parties.
  - 2.5 Both suit dismissed.
3. Tenant appeals 8<sup>th</sup> August 2003
- 3.1 The Hon. Magistrate completely misapprehended the pleadings.
  - 3.2 ... failed to approve the evidence.
  - 3.3 ... failed in judicial value
  - 3.4 ... failed to consider claims for trespass
  - 3.5 ... failed to consider claim for plaintiff's goods.
  - 3.6 ... failed to recognize the law on defamation
  - 3.7 ... failed to appreciate loss of income
  - 3.8 ... failed to establish whether seized goods were  
lawful or not.
  - 3.9 ... failed to consider exemplary award.
  - 3.10 Appeal be allowed and uphold the appellant's case.
4. Respondent in reply
- 4.1 Respondent filed no cross appeal.

4.2 *Argument that the judgment is supported.*

4.3 *Require proof.*

4.4 *Defamation claim no evidence.*

4.3 *Attributed letter to rent arrears.*

4.4 *Disallow appeal.*

5. *Held:*

i) *Appeal allowed.*

ii) *Normal damages.*

6. *Case Law:*

7. *Advocates :*

i) *N. Harun instructed by M/s Nelson Harun & Co Advocates for appellant/plaintiff*

ii) *F.S Mwaura instructed by M/s Mwaura Shairi & Co Advocates for respondent/  
original defendant*