



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Civil Case 44 of 2009**  
**KAPURCHAND DEPAR SHAH.....PLAINTIFF**  
**VERSUS**  
**KASTURI LIMITED.....DEFENDANT**  
**JUDGMENT**

KAPURCHAND DEPAR SHAH, the plaintiff herein, in his capacity as the legal representative of the estate of Shah Kasturben Kapurchand, deceased, filed the plaint dated 5<sup>th</sup> March 2009 in which he applied for Kasturi Ltd, the defendant herein, to be evicted from the premises standing on L.R. No. Nyeri Municipality Block 1/83. The defendant filed a defence to resist the plaintiff's case.

When the suit came up for hearing, the plaintiff and the defendant each tendered the evidence of one witness. Kapurchand Depar Shah (PW 1) being the administrator of the estate of the late Shah Kasturben Kapurchand produced the lease agreement dated 14/6/2006 governing the tenancy relationship between the deceased and the defendant company. PW 1 further produced the notice to vacate he issued to the defendant dated 24/10/2008. The plaintiff tendered documentary evidence showing that the defendant has always been in arrears of rent in breach of the terms of the lease agreement. There is also evidence that the plaintiff was forced at times to distress for arrears of rent.

The defendant tendered the evidence of Bipinchandra Shah (DW 1) in support of its defence. He told this court that he executed the lease agreement with the landlord for a period of 5 years 3 months. DW 1 admitted having received the quit notice dated 24/10/2008 giving the defendant 3 months to vacate the suit premises. DW 1 stated that he was required by the agreement to pay rent in the name of Taranglata R. Shah. He produced cheques showing the defendant was paying arrears of rent. DW 1 admitted that the plaintiff occasionally sent auctioneers to distress for arrears of rent. The defendant claimed to be refunded the amount the defendant incurred in renovating the premises vide the counter-claim. DW 1 claimed that the defendant put on tiles, painted the shop, put up two toilets, a store and connected water to the premise. DW 1 said that had the lease run to its full term he could not have claimed for a refund of the amount it incurred on renovation. The defendant said that he required between 9 to 12 months to enable it clear its stock which it valued at Kshs.5 million. On cross examination DW 1 admitted that he was aware that clause 6 of the lease agreement required either party to terminate the lease by giving the other party three (3) months notice. DW 1 also admitted that the clause did not specify the conditions attached to such a notice.

At the close of evidence, learned counsels appearing in this suit were invited to file written submissions which they did. I have considered the evidence and the submissions. The following issues arose for my determination.

First, whether or not the lease agreement though not registered operates as a contract.

Secondly, whether or not the plaintiff is entitled to vacant possession of the suit premises.

Thirdly, whether or not the defendant is entitled to a refund!

On the first issue, it is not in dispute that the defendant was put into occupation of the premises standing on L.R. No. Nyeri Municipality Block 1/83 pursuant to the lease agreement it executed with the late Shah Kasturben Kapurchand on 14/6/2006. The lease agreement was not registered but nevertheless the same was used to create the tenancy. The law is well settled that an unregistered lease should be regarded as a contract. The court of appeal for Eastern Africa in the case of Kenneth Thomas Clarke t/a Shipping General Services =vs= Sondhia Ltd [1963] 107 held inter alia;-

*“That an unregistered lease could operate as a contract inter partes and confer on the party in the position of the intending lessee a right to enforce the contract specifically and to obtain from the intending lessor a registrable lease.”*

It is therefore clear that though the lease entered herein was not registered, the same will be regarded as a contract. Clause 6 of the aforesaid lease gave either party to terminate the lease by giving the other 3 months notice. The second issue is not difficult to determine. It is conceded by the defendant that it was given three months notice to vacate the suit premises. The defendant further admits that the lease agreement does not give conditions before issuing a quit notice. I find the notice issued by the plaintiff to be within the provisions of clause 6 of the lease agreement. I am convinced the plaintiff is entitled to the orders sought. On issue No. 3, the question is whether or not the defendant is entitled to be refunded Kshs.800,000/- which it allegedly incurred in renovations. It is conceded by the defendant that it did not seek prior approval of the landlord to carry out the renovations.

The issue concerning renovations is not contained in the lease agreement. I do not think the defendant is entitled to the refund in view of the above reasons.

In the end I enter judgment in favour of the plaintiff and against the defendant as prayed in the plaint with costs to the plaintiff. The counter-claim is ordered dismissed for lacking in merit with costs to the plaintiff.

*Dated and delivered this 7<sup>th</sup> day of May 2010.*

**J.K. SERGON**

**JUDGE**

In open court in the presence of Mr. Mahan for the defendant and Nganga for the plaintiff.