



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Suit 185 of 2006

HIGHLAND HOMES INVESTMENTS CO. LTD.....PLAINTIFF

VERSUS

PAUL MUTHEE MWANGI.....RESPONDENT

JUDGMENT

The plaintiff claims in its plaint and in the testimony of its Managing Director, Boniface Philip Kimemia PW1, that it is the owner of Plot No. 73 Miharati Trading Centre (the suit property) on which it has constructed a commercial complex. Since 1986 it has let the property to the defendant at a monthly rent of Kshs.1,000/=. In 2004 when it sought to increase the rent to Kshs.3,000/=:, the defendant refused to pay the same and has since not even paid the agreed rent of Kshs.1,000/=. The plaintiff then served him with notice to terminate the lease whereupon the defendant filed a reference in the Business Premises Rent Tribunal (the Tribunal).

On 27th June 2005 the Tribunal dismissed that reference and directed that the notice shall take effect from 1st January 2005. Despite demand to vacate, the defendant refused to comply necessitating the filing of this suit in which the plaintiff seeks his eviction from the suit property and mesne profits at the rate of Kshs.1,000/= from 1st January, 2005.

The defendant disputes the claim alleging that the suit property is, according to the search he has carried out, registered in the name of the late Harrison Hari (the deceased). Pursuant to the demand made to him by the deceased's widow, he has and is still paying the rent to the widow. In his evidence he said he knows nothing about Nyeri HCCC No. 400 of 1986 which decreed the suit property to the plaintiff in a dispute pitting the plaintiff against the deceased's widow over its ownership.

I have considered the matter and the evidence on record. The defendant admitted in cross-examination that from 1986 to 2004 he was a tenant of the plaintiff in the suit property. The plaintiff was therefore entitled to serve him, as it did, with the termination notice. Even without knowing of the decision in Nyeri HCCC No. 400 of 1986, having paid the rent to the plaintiff since 1986, the defendant knew who was the

owner of the suit property. It is after he had been served with the termination notice that he sucked the deceased's widow into the dispute between him and the plaintiff.

As I have said, the defendant's reference to the Tribunal was dismissed on the 27th June, 2005 and the notice took effect from 1st January 2005. That that dismissal was for non-attendance does not avail him as he has to date done nothing to set the dismissal order aside. The termination notice, as the Tribunal stated, took effect from 1st January, 2005. In the circumstances the defendant has no right to continue remaining in the suit property. Consequently I find that the plaintiff is entitled to the eviction order it seeks.

As regards the claim for mesne profits, the defendant did not dispute the fact that he has not paid any rent to the plaintiff since 1st January, 2005. In fact he claimed to have been paying it to the deceased's widow. He had no right to pay to the widow of the deceased rent that was rightly due to the plaintiff. I find that he is also liable to the plaintiff for the mesne profits of KShs.1,000/= which is the monthly rent he was paying from 1st January, 2005 plus interest thereon.

In the upshot I grant the plaintiff the eviction order it has sought and also enter judgment for it in the sum of Kshs.59,000/= being the mesne profits from 1st January, 2005 to 30th November, 2009 and a further sum of Kshs.1,000/= per month from the date of this judgment to the date he vacates or is evicted. As the mesne profits have run upto the date of this judgment, I grant the plaintiff interest on these sum at court rates from the date hereof. The plaintiff shall also have the costs of this suit and interest thereon.

DATED and delivered this 9th December, 2009.

D. K. MARAGA

JUDGE.