

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 5414 of 1991

JULIE ACHIENG PLAINTIFF

Versus

NAIROBI CITY COMMISSION DEFENDANT

JUDGMENT

The Plaintiff filled this suit by plaint dated 9th October, 1991 against the Defendant praying for Judgment for

- (a) “An order that the defendant do deliver vacant possession of the premises to the Plaintiff upon the Plaintiff’s payment of Kshs.27,000/=”**
- (b) General damages**
- (c) Costs of this suit**
- (d) Interest on b and c “**

The Defendant filed a defence dated 7th February, 1992 but this year 2008 when the case came up for hearing before me, the Defendant seems to have lost interest in the case and therefore though served with the relevant hearing notice, there was no appearance for the Defendant during the hearing.

I have heard evidence from the Plaintiff who was the only witness before me. Her claim is that during the year 1991 the Defendant offered for sale and the Plaintiff accepted to buy the Defendant’s stall No. 550 situated at Kenyatta Market, Nairobi in consideration of kshs.27,000/=. Thereafter the Defendant failed or refused and/or neglected to deliver vacant possession of the premises to the Plaintiff. The Plaintiff therefore claims that as a result of that, she suffered loss and damage. The Defendant in the filed defence aforesaid does not accept the Plaintiff’s claim and state there was no offer and acceptance.

It could not have been easy to understand why the Plaintiff suffered loss; but she explained in her evidence that she applied to the Defendant for a stall. She did not say that the Defendant had offered any stalls for sale before she applied for the stall she wants to get. But she went on to say that following her application, the Defendant sent her a response which indicated how much money could be paid for the stall she applied for and where to pay that money. But when she went to pay that money Kshs. 27,000/= the Defendant’s officer who was to receive that money declined to accept the money on the ground that the stall the Plaintiff wanted had already been given to some body else. Thereafter the Plaintiff came and filed this suit.

Otherwise, further evidence from the Plaintiff is that before she filed this suit she was renting a stall, not specified, at Kenyatta market, Nairobi from one Joseph Kirimi and was paying rent to that Joseph Kirimi. Later the said Joseph Kirimi “*wanted to take the stall back.*” That prompted the Plaintiff to apply to the Defendant for a stall whose number turned out to be 550 which the Defendant allegedly failed to deliver to the Plaintiff:

From that evidence, it would appear that if the Plaintiff’s business of selling and making cloths suffered

loss because of lack of a stall, it should have been the business she was doing at the stall she rented from Joseph Kirimi if the said Joseph Kirimi went a head and “***took the stall back.***”

In any case, from the evidence before me, I do not think the Defendant was bound to give any stall to the Plaintiff who must have been a mere applicant among other applicants whose applications could succeed or fail without the consequent loss the Plaintiff is now claiming against the Defendant. The Defendant never took any money from the Plaintiff. The sums of Kshs.27,000/= said paid by the Plaintiff is said deposited in the court as a result of a Court Order granting her an injunction pending the hearing and determination of this suit.

On the whole therefore, although the Defendant has offered no evidence in its defence, I am not persuaded, even on the balance of probabilities, that the evidence adduced by the Plaintiff entitles her to any of the prayers in her plaint.

Accordingly, this suit is hereby dismissed.

Dated and delivered at Nairobi this 21st day of February, 2008

J.M. KHAMONI

JUDGE