



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

Civil Case 111 of 2007

COUNTY COUNCIL OF OLE KEJUADOPLAINTIFF

VERSUS

KILIMANJARO SAFARI CLUBDEFENDANT

JUDGMENT

This is a case involving a lease agreement between the Plaintiff and the Defendant registered on 9th April 2005. By it, the Defendant agreed to lease the Plaintiff's property known as Title Numbers *Kajiado/Ambnoseli/4* and *Kajiado/Amboseli/7*, (*herein referred to as "the suit properties"*) for a term of 37 years and 4 months at Kshs.4 million per year.

The lease also provided inter alia for the Defendant to maintain the water supply and drainage system of the buildings in the suit property in good repair and condition (to the reasonable satisfaction of the Plaintiff), that the Defendant shall throughout the term manage and operate the business of a Safari Lodge and/or a Safari Tented Camp in a proper and efficient manner, that the Defendant shall insure and keep insured the suit properties to the full value thereof and that the Defendant shall produce to the Plaintiff its audited accounts for each year.

The Plaintiff defaulted in the payment of rent and also failed to honour any of its obligations under the lease.

That in consequent of this default and failure, the Plaintiff levied distress against the Defendant on 6th January 2007.

And as a result of this distress the Defendant abandoned the premises and the Plaintiff installed its security guards in the suit premises for securing reasons.

According to the plaint filed in this Court on 16th May 2007 it was a term of the lease that the breach, non-performance or non-observance by the Defendant of its obligations under the lease would entitle the Plaintiff to enter upon the suit properties and determine the lease.

That arising from the Defendant's breach the Plaintiff has suffered and continues to suffer loss of income as a result of non-payment of rent. And that despite demand made and notice of intention to sue given the Defendant had failed, refused or neglected to make good the Plaintiff's claim.

That the lease contained arbitration Clause, since the defendant had filed **HCCC No. 182 of 2005**, thus submitting itself to the jurisdiction of this Court, there was nothing left to be referred to arbitration.

Orders sought in this suit aforesaid were:

- (a) *That the Plaintiffs' right to enter upon title numbers Kajiado/Amboseli/4 and Kajiado/Amboseli/7 and determine the leave dated 9th April 2002 has arisen, is exercisable and has been so exercised.*
- (b) *That the Plaintiff do take possession of title Numbers Kajiado/Ambnoseli/4 and Kajiado/Amboseli/7*
- (c) *Costs of and interest thereon at Court rates.*
- (d) *Any other or further order that this honourable Court may deem fit to grant.*

No appearance or defence were filed to this suit though there is a record on the file showing that the Plaintiff was served by a Process Server called **Ronald Ndwiga Njugi** by registered Post as per the posting slip annexed to the Return of Service.

In view of this the case was heard by way of formal proof and the sole Plaintiff's witness **Joseph Malinda**, its Clerk to Council repeated verbatim what had been stated in the Statement of Claim.

I have heard and recorded this evidence. As stated earlier, this suit is not opposed, neither is the evidence adduced herein.

However, in paragraph 12 of the Plaintiff's Statement of Claim, there is mention of **HCCC No. 182 of 2005** in which the Defendant as Plaintiff has sought reference to arbitration in respect to this dispute.

Then there is a supporting affidavit to some application in **HCCC No. 51 of 2007** in which the Defendant herein is the Plaintiff and the Plaintiff herein is the 1st Defendant

In fact in the latter case the Plaintiff therein (Defendant herein) intimates had deposited **Kshs.37,433,314** into Court as a result of an order of injunction made in that case.

How can I tell if I make a final order in this case on the evidence adduced it will not conflict with orders in the other two cases? Yes I should peruse the other two files before making a final order in this file.]

I hereby direct my clerk to place the files in **HCCC No. 182 of 2007** and **HCCC No. 51 of 2007** on my desk by 25th June 2007 for perusal before making a final order herein on 12th July 2007.

Delivered and dated at Nairobi this 22nd day of June 2007.

D. K. S. AGANYANYA

JUDGE