



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 346 of 1993

NASSOR MOHAMED NAHDY PLAINTIFF

VERSUS

RAVJI RAMJI MANJIDEFENDANT

J U D G M E N T

Nassor Mohamed Nahdy, the Plaintiff herein, filed an action by way of a plaint in which he sought for the following orders against Ravji Ramji Manji, the defendant herein:

- (i) Eviction from LR No. 284 Section III Mainland North, Mtwapa, hereinafter referred to as the suit premises and delivery of vacant possession
- (ii) Mesne profits
- (iii) Costs of the suit

When served, the defendant filed a defence, which was later amended pursuant to leave granted on 27th August 2002. In the defence the defendant denied the plaintiff's claim and made a counter claim for the estate of Ramji Kanji Patel, deceased, to be declared to have acquired the suit premises by adverse possession.

When this suit came up for hearing the defendant did not turn up save for his advocate. The defendant therefore failed to tender evidence, hence this court exercised its discretion under Order XVI rule 4 of the Civil Procedure Rules to decide the matter on the basis of the evidence presented by the plaintiff.

Nassor Mohamed Nahdy testified without calling any independent witness on behalf of the plaintiff's side. He produced in evidence a copy of the letters of administration in respect of the estate of Mohamed Ali Nahdy deceased, to show that he instituted this suit in his capacity as the legal representative of that estate. He told this court that Plot No. 284/MN Mtwapa is registered in the names of Nassor Al Nahdy, deceased. This fact is admitted by the defendant in his defence and counter-claim. This plaintiff further told this court that the plaintiff's father, Ramji Kanji Patel now deceased was a tenant in the suit premises paying a monthly rent of Kshs.100. He produced receipt books with copies of receipts acknowledging rent received from the deceased covering the period between 1979 and 1982. the plaintiff further told this court that the defendant took over possession of the suit premises when his father passed away in 1985 as the executor of the will of the deceased. The plaintiff claimed that the defendant stopped paying rent immediately after his father passed away. He produced copies of the demand letters the plaintiff's advocates wrote to the defendant before filing this action.

Upon receiving the plaintiff's evidence, this court invited the advocates appearing for the parties to make

oral submissions. Mr. Odongo learned advocate who appeared for the defendant informed this court that he had no submissions to make. However, Mr. Pandya learned advocate for the plaintiff offered to make brief submissions. He urged this court to grant the plaintiff the prayers sought for in the plaint. He urged this court to note that the plaintiff did not receive rent since December 1982. He also argued that the counter-claim should be dismissed because there was no evidence to prove that.

Having considered the evidence tendered and the oral submissions made by the plaintiff's counsel, I think the main issue is whether or not the plaintiff has established his action and if so whether or not the prayers for sought are available to him. Let me first begin by stating that the defendant having failed to tender evidence to prove the counter-claim, the same stands unproved. Consequently the counter-claim is ordered dismissed with costs to the plaintiff.

I am satisfied that the plaintiff has been able to establish that the suit premises is the property of the late Nassor Al Nahdy. He has also proved that he is the legal representative of the deceased's estate. He has also proved that the defendant's father, Ramji Kanji Patel, deceased was a tenant in the suit premises paying a monthly rent of Kshs.100 to the late Nassor Al Nahdy.

The plaintiff has further shown that Ramji Kanji Patel passed away in 1985 . The defendant took over possession of the suit premises as the executor of the Will of Ramji Kanji Patel. These facts are not even denied in the defence. I am also convinced that the plaintiff has shown that neither the defendant nor the estate of Ramji Kanji Patel has paid the outstanding arrears of rent since 1982. Taking into account all these factors I am satisfied that the plaintiff has proved his claim on a balance of probabilities. Consequently judgment is entered in his favour as follows:

- (i) The defendant should move out of plot No. 284 Section III Mainland North Mtwapa within 30 days from the date hereof and in default the plaintiff is at liberty to have him forcefully evicted without further delay.
- (ii) The defendant should pay the plaintiff mesne profits i.e. Kshs.100 per month as from the month of January 1983 up to the month of February 2006.
- (iii) Costs of this suit
- (iv) The counter-claim is ordered dismissed
- (v) Costs of the counter-claim to the plaintiff.

Dated and delivered at Mombasa this 24th day of February 2006.

J.K. SERGON

J U D G E