



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 269 of 2004

JAMES MICHUKI MWANGI 1ST PLAINTIFF

MICHAEL KARIMI WILLY 2ND PLAINTIFF

VERSUS

ESTHER WANJIRU KABUGU 1ST DEFENDANT

MICHAEL KABUGU NGUNJIRI 2ND DEFENDANT

RULING

The plaintiffs are the proprietors of a property known as **LR NO. Nakuru Municipality Block 9/22** (hereinafter referred to as “the suit premises”) and the same comprises of a showroom, one office, one store and a hotel. The suit premises were rented to the defendants for a period of 5 years one month from 1st July, 1999. The parties executed a lease but the same was not registered. The lease provided an option to renew the same for a similar period and the option was excisable by either the plaintiffs or the defendants. The term of the lease expired by effluxion of time on 30th June, 2004 and by that time the monthly rent payable was Kshs.11,500/-. The lease was not renewed but the defendants continued to occupy the suit premises without consent and or authority of the plaintiff and they continued to pay rent.

The plaintiffs contended that the defendants were now trespassers into their property and prayed for vacant possession of the suit premises and mesne profits at the rate of Kshs.20,000/- per month from 1st July, 2004 until vacant possession was granted.

The defendants filed a joint statement of defence and denied that they were trespassers on the suit premises. They said that there was a formal Landlord – Tenant relationship that was in existence. They further stated in paragraph 4 of their statement of defence that:

“At the hearing hereof, the defendants shall contend that by virtue of the existence of a monthly tenancy between the parties herein they are protected tenants under the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act cap 300(sic) and that in that regard, the matters herein ought to have been raised at the Business Premises Rent Tribunal. Consequently, this court lacks jurisdiction to entertain this matter and the Defendants shall at the most appropriate time seek to have the same struck out and/or in the alternative be referred to the Tribunal aforesaid.”

(I believe the defendants’ advocates were referring to cap 301 and not cap 300).

The above preliminary objection was raised when this matter came up for hearing. Mr. Kahiga for the defendants submitted that the suit premises were governed by the provisions of the Registered Land Act and under section 47 of the Act a lease for any period in excess of two years must be registered and the failure to register the lease that the parties had executed meant that there was no lease in existence. He sought to rely on WALSH VS LONSDALE (1882) 21 Ch.D 9 and ROGAN-KAMPER VS LORD GROSVENOR No.2[1977] KLR 123.

He further submitted that the defendants were month to month tenants and therefore the dispute between the parties should have been dealt with in accordance with the provisions of **section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act**.

Mr. Mbutia for the plaintiffs submitted that the court had jurisdiction to hear and determine the dispute. He further submitted that whether the expired lease was registered or not, it created a contract between the parties and they were bound by the terms of the contract as if it had been registered. He also relied on the case of ROGAN-KAMPER VS LORD GROSVENOR(Supra).

He added that the lease expired on 30.6.2004 and a notice was issued by the plaintiffs to the defendants asking them to vacate the premises and that having failed to vacate, they became trespassers thereto. He urged the court to dismiss the preliminary objection.

I have carefully considered the submissions made by both counsel in this matter. I think that an appropriate starting point is a consideration of the provisions of **Section 47 of the Registered Land Act cap 300 Laws of Kenya**.

The same provides as follows:

“47. A lease for a period exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by;-

- (a) opening a register in respect of the lease in the name of the lessee; and**
- (b) filing the lease; and**
- (c) noting the lease in the encumbrances section of the register of the lessor’s land and lease.”**

It is therefore clear that the lease for five years one month that the parties herein entered into required to be registered but it was not. The same was executed and the plaintiff’s just sat on it for some unexplained reason until the term of the lease expired by effluxion of time on 30th June, 2004. Thereafter the defendants continued their occupation of the suit premises and indeed paid rent in advance, up to October, 2005 whereas the plaintiff’s suit was filed on 22nd September, 2004. The plaintiffs accepted payment of the said rent even though they did not expressly consent to the defendants’ continued occupation of their property. In the circumstances as aforesaid, what was the legal status of the defendant’s occupation?

I believe **section 52 of the Registered Lands Act** provides the answer. It states as follows:

“52(1) where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the determination of the lease, he shall, subject to any written law governing agricultural tenancies and in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease, so far as those conditions are appropriate to a periodic tenancy.

(2) for the purposes of this section, the acceptance of rent in respect of any period after the determination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.”

The defendants were therefore in periodic tenancy of the suit premises. In **W.J BLAKEMAN LTD VS ASSOCIATED HOTEL MANAGEMENT SERVICES LTD [1986] KLR 156** the Court of Appeal held that the outstanding features of a monthly tenancy are possession and payment of rent.

Having established that the defendants were holding the suit premises on a periodic tenancy, the plaintiffs could only terminate that tenancy by serving the defendants with an appropriate notice in accordance with the provisions of **section 4(2)** of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301 Law of Kenya.

I therefore hold that this court lacks jurisdiction to entertain this suit. I uphold the preliminary objection that was raised by the defendants and consequently strike out this suit with costs to the defendants.

DATED AT NAKURU THIS 31st DAY OF March, 2006

D. MUSINGA

JUDGE

Ruling delivered in open court in the presence of Mr. Mbuthia for the plaintiff and Mr. Kahiga for the defendant.

D. MUSINGA

JUDGE