



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

Civil Suit 4391 Of 1994

**MARGARET WANGARE KIMANI
PLAINTIFF**

VERSUS

- 1. WANJIKU WAHITI**
- 2. MBUGUA KAHIHU**
- 3. MUGA KAHIHU**
- 4. C.K. GITAU t/a VENUS GENERAL MERCHANTS.....DEFENDANTS**

JUDGMENT

The plaintiff Margaret Wanjiku Kimani sued for defendants as the plaintiff shows.

She sued as the “**lawful tenant**” in plot number L.R 31/11/39 Kiambu town.

Her claim appears in para 5, where she states that on 14th December 1994, “**the 4th defendant unlawfully broke into the suit premises carried away her property of unknown value without issuing any inventory and damaged doors, locks, beer bottles and furniture**”.

The plaintiff suffered “**great loss and damage,**” as a result of the above action by the 4th defendant.

The plaintiff sued the four defendants jointly and severally for general damages, an injunction order to stop her eviction, a declaration that the act of “**distress and threatened eviction is illegal**”, release of the distressed property, and finally costs and interests of the suit.

The suit came to me as a formal proof. On that day, counsel for the plaintiff addressed court stating that the 1st defendant never entered appearance despite having been served. That the 2nd defendant’s defence was struck out, but nevertheless he was served to appear for the hearing but he failed to do so. That the

3rd defendant too failed to enter appearance or file defence after service of summons. The suit against the 4th defendant was withdrawn.

The plaintiff complained in court during the hearing of her suit that the defendant's attached her goods from a shop in plot No. 31 in Kiambu town, where she was running a bar and restaurant, sometime in 1994. That the defendants wanted to evict the plaintiff as they said the shop belonged to their father.

The plaintiff is still in the building as a tenant as she "sued" the tenants in the Tribunal. However, her goods were never returned. She produced a list of some of the goods taken from her shop.

The plaintiff had employed a manager to run the shop, one Njoroge, whom he identified in court.

The plaintiff produced an order of this court, granted on 3.12.1998. The plaintiff sought an order for return of her goods and or compensation for the goods taken.

The plaintiff's shop manager Joseph Njoroge Muthiora also gave evidence. He confirmed that the shop run a bar and hotel business.

He recalled that the auctioneers came to the shop on 14th December, 1994, whilst he was in the bar and took goods listed in the Notice of Distress, and many more goods, which were not listed by then. Njoroge made a list of the other goods which the auctioneers did not list in the Notice of Distress. He produced the auctioneers Notice of Distress as Ex. 3.

The court records show that the suit against the 4th defendant was withdrawn on 20th May 2005, by Ransley, J, who directed the 4th defendant to attend court on the day of the hearing as a witness, as he acted as an agent in whatever he did which gave rise to this case. The 4th defendant, was not, however, called as a witness during the hearing before me.

I considered that the plaintiff's evidence was corroborated by that of the second witness who was her manager, and was present in the shop when the auctioneers took property from the shop, and subsequently refused to return them despite court orders to that effect. The inventory left behind by the auctioneers shows a lot of stock taken from the bar. These ranged from crates of beers and sodas to furnitures – i.e. tables and chairs and stools etc etc.

The plaintiff's witness produced another list of items taken and not reflected in the inventory left behind by the auctioneer and his team. Most of those were items taken from the shop.

In the court file is a Notice to admit documents served by the plaintiff's counsel to all the defendants. The Notice shows the list of documents which were going to be produced at the hearing and were indeed produced. None of the defendants raised any issue when the notice to admit documents was served on them. I therefore find that they admitted the production of the documents in court.

Further, none of the defendants 1,2, and 3 appeared in court during the hearing of the suit, yet they had been served to appear.

From the evidence I recorded, I find that the plaintiff proved her case against defendants 1,2 and 3, on a balance of probabilities. The suit was proved even without the evidence of the auctioneer who was going to come and merely say that he acted as an agent of a principal who was disclosed.

I have seen from the exhibits the estimates the plaintiff put on the value of the goods taken from his shop and bar. As the case was not defended I could easily allow the entire claim, but I will grant what I consider to be just and fair in the circumstance.

The upshot of my judgment is that I find judgment for the plaintiff against defendants 1,2 and 3 jointly and severally.

Further, I grant an injunction order to restrain the defendants, their servants and/or agents from evicting the plaintiff from the suit premises.

Further I proceed to declare that the act of distress and threatened eviction is illegal.

I proceed to award the plaintiff a sum of Kshs.100,000/= as compensation for his goods which were distressed and never returned despite a court order to that effect.

The plaintiff will also have costs of this suit, plus interest calculated at court rates.

Dated at Nairobi this 7th day of April, 2006.

JOYCE ALUOCH

JUDGE