



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 332 of 2002

NTHAKA LTD. PLAINTIFF

- Versus -

NATIONAL SOCIAL SECURITY FUND DEFENDANT

J U D G M E N T

The plaintiff was a tenant in the defendant's premises. He held a written agreement. However he was requested to vacate on 20/5/2002.

On or 4/6/2002 the defendant forcefully evicted the plaintiff and threw his goods outside the shop. The plaintiff pleads that the said notice was unlawful and he claims damages. He lost goodwill. The plaintiff prays for declaration that the purported termination of tenancy and subsequent eviction were unlawful general damages special damages Shs. 103,792/00 and costs and interest.

The notice complained of was given by the defendant under the provision of Landlord & Tenant (Shops Hotel & Catering Establishments) Act Cap 301 Laws of Kenya. The notice was not in the prescribed form.

The notice did not give the landlord power to take the law into his hands but to obtain court orders against the tenant. By an amendment of the plaint the plaintiff now claims loss of profits 3,000/= per day until reinstated. Agreed issues were filed on 22/10/2002. The parties treated their tenancy as one governed by the provisions of Cap 301 Laws of Kenya. The eviction of the defendant was therefore unlawful and contrary to the provisions of the Act.

The defendant is therefore liable for loss and damage that arose out of the unlawful acts. Oral evidence was given to support the plaintiff's pleadings. After eviction on 4/6/2002 this court reinstated him on 29/8/2002. The loss of goods was calculated as Shs. 103,792/=. The loss of business for 111 days was calculated at Shs. 3,000/= per day and therefore total loss Shs. 333,000/=. The claims were supported by exhibits. The fact that the plaintiff was evicted is not denied but the defendant says that the eviction was after notices having been given to the plaintiff and the plaintiff having failed to vacate as requested. The defendant admitted that they did not request the police to assist in eviction.

DW2 was supervising the eviction. He is the one who removed the goods with assistance of the security guards around. He denied goods were lost or damaged. He added that goods stayed outside for one week. Thereafter the goods were taken to the offices of the defendant on 7th floor in the building. No inventory was taken. The guard testified that they did not guard the goods.

The advocates submitted on legal authority. Mr. Mutisya quoted the case of Lavender Vs Butts an English case where the court held that the plaintiff was entitled to punitive damages and was awarded £45 in 1942.

I have already found that the plaintiff was unlawfully evicted. The evidence by the defence witness corroborates the plaintiff case. The excuses given by the defendant that notices were given are not sufficient. The only step open to them was for obtaining a court order instead of taking law in their own hands.

I find the defendant is entitled to recover the loss of his lost goods. The defendant's employee who removed the goods did not take any inventory and the court has to believe the plaintiff in this claim. A claim of 103,752/= is therefore awarded to the plaintiff. On the loss of business the defendant witness says the door of the premises was removed and the plaintiff was not able to carry out his business for about 2 months. It is actually 111 days less 14 Sundays when no trade was carried out. Therefore the days lost are 97.

Regarding the daily earnings the fact is that daily sale amounts include purchases price of the goods and expenses of the sales. In the exhibits shown no daily expenses are shown. Therefore the average earnings per day are not disclosed under exhibit 7(a) and 7(b). Therefore although plaintiff has pleaded for loss of profits the amount is not proved. This claim fails.

On the issue of general damages there is adequate evidence that the plaintiff suffered considerable damage by the unlawful eviction which I find as proved.

I therefore enter judgment against the defendant in favour of the plaintiff as prayed firstly a declaration as prayed. Secondly in the sum of Shs. 103,792/= special damage and General damages in the sum of Shs. 250,000/=. Total sum shs. 353,792/= plus costs and interest at court rates.

Dated this 23rd day of May 2006.

J. KHAMINWA

JUDGE

23/5/2006

Khaminwa J.

Murimi court clerk

Mr. Bosire h/b

Mr. Odhiambo for defendant

Judgment read in open court.

J. KHAMINWA

JUDGE