



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

Civil Case 2729 of 1998

AVTER SINGH BAHRA.....

PLAINTIFF

VERSUS

RAMESH SHAMJI SHAH T/A MUSICAL SERVICES.....

.....DEFENDANT

JUDGMENT

This claim arises out of a tenancy Lease Agreement entered into between the plaintiff and the defendant dated 20th May 1992 in which the plaintiff let out to the defendant the premises known as GODWON NO.1 erected on L.R. NO. 209/9831/8 along Enterprises Road Nairobi for a term of 5 years and 3 months. One of the express terms of the Lease Agreement was that the defendant would carry out a complete internal redecoration including repairs of the suit premises upon the demise or termination of the tenancy Agreement before handing over vacant possession thereto to the plaintiff.

The defendant breached the terms of the tenancy Agreement and consequently the plaintiff filed a civil suit against the defendant being HCCC NO. 913 OF 1997 seeking for eviction of the defendant from the suit premises.

By a consent judgment of 10th February 1998 the Defendant was ordered to vacate the suit premises and hand over vacant possession thereof to the plaintiff on 31st March 1998 and also pay to the plaintiff a sum of Kshs.580,000/= being mesne profits for the period up to 31st March 1998. Despite the Decree issued above the defendant never handed over vacant possession until 10th June 1998 and when it was handed over it was in deplorable condition which forced the plaintiff to carry out repairs and redecoration and sued the defendant for the extra costs.

The plaintiff in his evidence told the court that he had by Lease Agreement dated 20th May 1992 let the suit premises Godown No.1 on L.R. NO. 209/9831/8 to the defendant for a term of 5 years and 3 months. The Lease Agreement was signed by both the tenant and the landlord and was produced as Exhibit I. The defendant breached the terms of the tenancy Agreement and he sued him seeking orders of eviction in HCCC NO. 913 OF 1997.

By a consent judgment of 10th February 1998 the defendant was ordered to vacate the suit premises and hand over vacant possession thereof to the plaintiff on 31st March 1998 and also pay to the plaintiff a sum of Kshs.580,000/= being mesne profits for the period up to 31st March 1998.

The defendant failed to hand over vacant possession of the suit premises until on 10th June 1998. When he inspected the suit premises he found the same in deplorable condition. When he requested the defendant to carry out the necessary repairs, the defendant refused and he effected the repairs and redecoration at a cost of Shs.391, 211/= which amount he now claims from the defendant. He produced receipts to support the amount he spent to carry out the necessary repairs and redecoration.

He had instructed a firm of valuers LLOYD MASIKA LTD to value the cost of repairs and to determine the rent payable. But when PW3 PATRICK MUSILI BANGULA came to give evidence on behalf of the plaintiff, he told the court that the property he was instructed to value was L.R. NO. 209/9831/3 and produced the valuation Report as Pexh.9.

At the close of the plaintiffs case Mr. Kimondo applied for leave to amend both the plaint and the Tenancy Agreement to reflect the suit premises as L.R. NO. 209/9831/3 and not L.R. NO. 209/9831/8 which application was opposed on the ground that if the amendment was allowed the same would introduce a new subject matter after the plaintiff had closed his case and the same would be prejudicial to the defendant. The application for amendment was disallowed.

The defendant in his defence denied to have leased the suit property as indicated in paragraph 3 of the plaint. The property L.R. NO. 209/9831/3 was under construction and he stored his goods there from 20th May 1992 up to 31st March 1998 but there was no lease agreement for L.R. NO. 209/9831/3 and all the rent was paid before he gave vacant possession after the suit was finalized by a consent judgment.

Mr. Nyaberi counsel for the defendant submitted that the case is an error and thus a nullity and the same is an afterthought as the issues raised are resjudicata and the claim has no legal basis. The agreement which is the basis of the suit herein described the property as:

Lease of Godown No. 1 on L.R. NO. 209/9831/8 Enterprise Road and all exhibits adduced in court were adduced as evidence in respect of the above property and it was not until the valuation report was adduced which claimed to adduce evidence on another property namely:

Godown No.1 on L.R.209/9831/3.

The lease agreement refers to the property known as L.R. NO. 209/9831/8 but the repairs which are the subject matter of this claim were carried out on a different property known as L.R. NO.209/9831/3 which was not the subject matter of the lease agreement.

The plaintiff has plainly admitted that the contractual agreement have described a different property from the one upon which the alleged repairs were carried out. Mr. Nyaberi further submitted that the lease agreement was for a term of over 12 months and having not been registered the same was invalid. He further submitted that even if the lease agreement was admissible, the plaintiff's claim is based on a clause which states thus:

On vacation: redecoration complete internally including repairs of any made.

This terms is vague and does not put any obligation on the defendant to undertake any repairs or at all.

The defendant having proved that the issues raised herein are resjudicata and that the case is an error and thus a nullity and that the same has no legal basis, the plaintiff's claim cannot be sustained and suit is dismissed with costs to the defendant.

Delivered and dated at Nairobi this 25th day of September 2006.

J.L.A. OSIEMO

JUDGE

