



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Case 173 of 2002

1. HUSSEIN KHAKI
2. MOHSIN KHAKI
3. MUSLIM KHAKI
.....PLAINTIFFS

VERSUS

1. R.M. VAGHELA
2. ALI A. BASMER T/A
COAST BATTERY DISTRIBUTORS
.....DEFENDANTS

RULING

Before the court there is Notice of Motion brought by the plaintiffs under order 35 rule 1 C.P.C. seeking summary judgment against the defendants as prayed in the amended plaint in the sum of Shs.1,872,596/- with interest and costs on the ground that the defence filed herein is a sham and raises no triable issues.

Supporting affidavit shows that the defendants were at the commencement of this suit truly indebted to the Plaintiffs in the said sum of Shs.1,872,596/- for breach of lease agreements dated 10/2/2002.

The lease agreement relates to godowns No. 2 and 3 on Plot No. 46/47 Section XXV, Mvita Road for eight years from 1/3/2000 at a monthly rent of shs.23,000/- (increasing by 20% every 2 years) rent payable monthly in advance with effect from that day.

That defendants wrongly and in breach of said agreement terminated tenancy by yielding up and returning possession of the said godowns and refused to pay rent for remainder of the term. By conduct the defendants showed their intention not to be bound by the said agreements and they repudiated the same 6 years before the expiration of the term.

The plaintiffs accepted repudiation. The godowns remained vacant for sometime and only managed to re-rent at reduced rentals and they suffered loss as shown in the amended plaint.

At the time of the giving up possession the rent was in arrears in sum of Shs.516,120/-.

The Plaintiffs therefore claim total Shs.1,872,290/-. The defendants have filed an amended statement of defence and a replying affidavit. The defence raises the issue that the leases were not registered. This does not render the documents invalid and does not reduce the lease to a monthly tenancy. The agreement remains as evidence of a contract and all its terms are enforceable. The amended statement of defence does not add anything new except it now raises issues of different premises godown 1 and also raises a counterclaim, which is not particularized at all. This issue is clarified in the further affidavit for plaintiff and the exhibit attached and marked HKI. In the circumstances allegations contained in the statement of defence and counterclaim are false and cannot be relied upon. I find the defence as amended has no triable issue and is not a defence to the Plaintiffs suit in respect of Godown 2 and 3.

The claim arising out of lease agreement in writing is a liquidated demand as calculated in the plaint. No evidence is required to add to or to explain a written agreement. It is not denied that rent was in arrears. It is not denied that the agreed term of contract was uninterrupted by defendants carrying the Plaintiffs to suffer loss of rentals having considered the defence's replying affidavits and arguments of both counsels.

I am convinced that the plaintiffs' claim is liquidated and does not need evidence to go to trial.

I enter judgment as prayed in the amended plaint together with costs of this application.

I find the statement of Defence filed to be a sham without any defence to the plaintiffs' claim.

Delivered and dated at Mombasa this 11th day of October 2005.

J. KHAMINWA

J U D G E

Mr. Kiarie:

I apply for typed copies of proceedings and ruling.

Mr. Kagam:

No objection.

KHAMINWA, J

COURT:

Let the same be supplied upon payment of copying charges.

KHAMINWA. J