



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**CIVIL SUIT 449 OF 2003**

**PIONEER GENERAL ASSURANCE SOCIETY LTD ..... PLAINTIFF**

**VERSUS**

**JOSEPH NDUNGU T/A WANJASI GEMSTONES.....DEFENDANT**

**RULING**

It is most unfortunate that this application for an eviction order and summary judgment that was filed on 15th December, 2003, has still not been resolved, and the Respondent continues, most unfairly I think, in occupation of premises he ought to have vacated some two years ago – without payment of rent!

When the application first came up for hearing on 23rd September, 2004 before my sister Judge, Lady Justice Aluoch, she granted the orders sought in a well-reasoned Ruling handed down on 23rd September, 2004. That Order was set aside following an application by the Respondent on the ground that the Respondent had not been served with the hearing notice, and was not present at the hearing. Justice Aluoch then directed that the matter be heard by another Judge, and it was accordingly heard by this Court on 20th September, 2005.

Nothing of substance has changed between the time Justice Aluoch heard this matter, and now, except of course, the Respondent has enjoyed two more years of relatively free use of someone else's property. So, let me consider the application dated 7th October, 2003 afresh on its merit. Essentially, the applicant seeks vacant possession of the suit premises from its tenant, the Respondent, and summary judgment as per prayers in the Plaint on the grounds that the Respondent is grossly in arrears of his rent, and that his defence raises no triable issues.

In his Replying Affidavit, the Respondent contends that the Applicant, having changed its name from "Pioneer General Assurance Society Ltd" (his landlord) to "Pioneer Holdings (Africa) Ltd" had no locus standi to bring this suit.

However, in a supplementary affidavit filed on behalf of the respondent, the latter has explained that its name was changed legally, and the Plaint has since been amended to reflect the legal change. This argument, therefore, is of no help to the Respondent.

Secondly, and more importantly, the Applicant has sworn that the Respondent is in arrears of rent and as of 1st February, 2003 the sum of Kshs.142,310/= was outstanding. This evidence has not been controverted by any proof of payment. And, his defence discloses absolutely no triable issue. It is a simple four paragraph nine-line defence which is nothing more than a mere denial. It says absolutely nothing, and has absolutely no chance of success. It would be grossly unjust to continue denying the Applicant the suit property, and thereby condone the Respondent's act of unjust enrichment.

Accordingly, application dated 7th October, 2003 is granted in its entirety. I hereby strike out the Defence and enter Judgment as prayed in the application dated 7th October, 2003. The Plaintiff/Applicant shall also have the costs of this application.

Dated and delivered at Nairobi this 5th day of October, 2005.

**ALNASHIR VISRAM**

**JUDGE**