



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Suit 312 of 1996**

**SOLOMON KIM KARIUKI.....PLAINTIFF**

**VERSUS**

**TABITHA ANN WANGARI.....1<sup>ST</sup> DEFENDANT**

**DIRECTOR OF SOCIAL SERVICES & HOUSING.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The plaintiff was in January 1977 allocated by the second defendant house number 25 in Ngala Flats, a residential estate within Nakuru Municipality which is owned by the said Municipal Council. The monthly rent then was Kshs.290/-. He stayed in that house until February, 1992. In 1991, he got a job with Transnational Bank and was given a house by the bank which he occupied and left two of his relatives in the said house. The two relatives, Edwin and Samson left the country for further studies in February 1992. The plaintiff said that after Edwin and Samson moved out of the house, he allowed the first defendant to occupy the same as she looked for her own house. The first defendant was paying the house rent in the plaintiff's name. Sometimes in 1996, the plaintiff was transferred to Nairobi and he did not want to move with his family and so he asked the first defendant to move out of the house so that he could settle his family there but she requested for a grace period of three months, the plaintiff testified. He said that on 31<sup>st</sup> May, 1996 he paid to the Municipal Council three months rent for the said house but he learnt that the house had been allocated to the first defendant after he had paid the rent. He sought intervention of the then mayor of Nakuru Municipal Council who wrote to the Director of Social Services and Housing asking him to reinstate the plaintiff into the said house and find another one for the first defendant. He further stated that the first defendant moved out some of her household goods on a Friday and promised to remove the remaining ones the following day which he agreed to and the plaintiff's relative known as Nicholas moved in. However, Nicholas was said to have been evicted therefrom a week later and the first defendant took back possession and occupation of the house. Thereafter the plaintiff brought this matter to court seeking a declaration that the purported allocation of the house to the first defendant was illegal, unlawful, null and void. He also sought a permanent injunction to restrain the first defendant from re-entering the said flat until this suit was heard and determined. The plaintiff told the court that he required the said house because he had grown up children who were working in Nakuru and they required a place to stay in. The plaintiff himself did not require the house as he had his own house in Lanet and was working and staying in Kitale.

When the plaintiff was cross examined by Mr. Kahiga for the first defendant, he stated that he had verbally informed the second defendant about the first defendant's temporary occupation of the house and the second defendant had approved the same. However, there was no documentary proof of the said allegation.

The plaintiff called as a witness Mr. Michael Cherop Rotich who was the mayor of Nakuru Municipal Council in 1996. The witness confirmed that he tried to help the plaintiff by writing a letter to the Director of Social Services and Housing and even approached a certain magistrate who was then in the station for some advice and possible help. The witness further stated that the first defendant paid Kshs.1100/- for the house on 10/6/1996 when the plaintiff had paid three months rent for the house on 31/5/96 and issued with a receipt on 3/6/96.

On the other hand, the first defendant stated that she started staying in the said house in 1986, having been put in occupation of the house by the plaintiff. She said that she was given a legalisation letter dated 4/3/96 recognising her as the legal tenant of the house with effect from 6<sup>th</sup> June, 1996. She was also given a tenancy card. She had paid a deposit of Kshs.1100/- and admittance fees of Kshs.1000/-. She said that between 1986 and 1996 she was the one who was paying the house rent in the plaintiff's name and by the time she moved in, the plaintiff had removed all his goods and had even assisted her to put in her stuff. Sometimes after the plaintiff realised that the first defendant had been allocated the house, he went there, broke the door and removed her goods and the first defendant had to seek temporary accommodation from her brother. However, the matter came to court and the first defendant was reinstated to the house, she said. The second defendant had sworn and filed an affidavit sometimes in July 1996 wherein he stated that the first defendant had illegally sublet the house contrary to Rule 1 Part II of the Tenancy Agreement thereby relinquishing his tenancy rights over the house. He confirmed that he had lawfully allocated the house to the first defendant saying that his council was not bound in any way to notify the plaintiff that the first defendant's stay was being legalised. He further deposed that the plaintiff's act of evicting the first defendant from the house was in total disregard to the council's policy which prohibited any individual from evicting a tenant from its houses and that only the Municipal Council's enforcement section could do so.

From the above summary of the evidence that was tendered by all the parties, it is clear that the subject matter of the dispute, house No. 25 in Ngala Flats is the property of the Municipal Council of Nakuru which was occupied by the plaintiff sometimes in 1977. Sometimes in 1992 or thereabout he vacated the house, leaving the first defendant in occupation of the same. Although the first defendant testified that she started living in the house in 1986, there was no evidence to that effect. But whether it was in 1986 or 1992 that is not important. What is important is that the plaintiff vacated the house of his own volition in 1991 and left his relatives in the house and they also left in 1992 and the first defendant has had exclusive occupation of the same since then. The plaintiff had no right to purport to continue laying any claim to the house and from the time when he vacated the same, he became disentitled to it and it matters not that the first defendant continued to pay rent for it in his name. The plaintiff did not require the house for his own occupation but for the benefit of his adult children to reside therein. I may state that Municipal Council houses are not hereditary properties to be passed on from fathers to their sons without the Council's consent and approval. The house belonged to the second defendant and it was perfectly entitled to allocate the same to the first defendant by legalising her occupation thereof. If the plaintiff had truly paid rent for June, July and August 1996 but the second defendant allocated the house to the first defendant, all that plaintiff ought to do is to request for refund of the Kshs.3,300/- which he had paid.

I find the plaintiff's case to be devoid of merits and I must dismiss the same with costs to the defendants.

DATED, SIGNED AND DELIVERED at Nakuru this 14<sup>th</sup> day of November, 2005.

**D. MUSINGA**

JUDGE

**14/11/2005**

Judgment delivered in the presence of Mr. Kurgat for the first defendant and Mr. Mutonyi holding brief for Mrs Mbeche for the plaintiff.

**D. MUSINGA**

JUDGE

**14/11/2005**