



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Appeal 83 of 2002

OMAR MOHAMED ABDALLAAPPELLANT

VERSUS

SHAFFA KHAMIS SHAFIRESPONDENT

J U D G E M E N T O N A P P E A L

On 15/6/05 before the court was Mr. Khatib advocate for Respondent and Mr. S.P. Master advocate holding brief for Ms. Y.A. Ali advocate for Appellant.

The court was requested to write judgment and deliver the same based on the evidence taken before by other judges who have since left the station. The record is typed.

The record relates to proceedings in the business premises tribunal. The grounds of appeal are set out in memorandum filed on 3/6/2002 stated as follows:-

1. The Tribunal erred in making an order for appellant to vacate on or before 30/6/2002 (giving less than 1 month notice).
2. The said order was against weight of evidence.
3. There was no evidence whatsoever of claims for non-payment of rent order. Order was based on non-existent fact or evidence.
4. No evidence was adduced that the tenant was required to change his mode of paying rent.
5. The tribunal misinterpreted Section 7 (1) of Cap 301.
6. Due to the length the Appellant has resided in the premises notice given by tribunal was inadequate.

The prayer is the reversal of Tribunal Order, allow the reference with costs.

From the record it appears that the Appellant has vacated the premises. On the merits of the appeal it appears from the record that the tenant has resided in the premises for a very long time (since 1942). However the landlord's respondents purchased these premises in the month of March 1996. The landlord

did not disturb the Appellant and allowed things to continue in the similar fashion for the tenant. The rent was paid irregularly whenever the Appellant thought convenient to herself. It is admitted that rent would remain unpaid for up to a year. The landlord obtained an assessment of rent which increased the rent to Shs.3,000/- in July 1996. Previously the rent was 1220/- and the Previous Landlord was Wakf Commissioners. I have perused the judgment of the then Chairman of the tribunal and the evidence offered by the appellant and also arguments made by counsel. I am satisfied that the Tribunal was correct. The relationship between landlord and tenant is of a commercial nature unless otherwise agreed the rent is payable on monthly basis. In this case no such other agreement had been reached. The tenant was bound to pay to the landlord monthly rent at the commencement of the month.

In this case the payment was so delayed that one can say the new Landlady

could not enjoy the income from her property. This is sufficient ground to seek order for vacant possession. The Tribunal was right in coming to the conclusion that “In law, the explanation offered by tenant cannot stand.”

The grounds of appeal have no merit. The appeal is dismissed with costs to the landlady respondent in this appeal and in the Tribunal.

Delivered and dated at Mombasa this 16th day of December 2005.

J. KHAMINWA

J U D G E

16/12/05

Khaminwa, J

Jason – court clerk

Mrs. Y. Ali present

N/A for Khatib

Judgement read in her presence.

KHAMINWA, J