

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 134 OF 2001

DAVID WANJOHI KAMAU.....APPELLANT

VERSUS

GEORGE N. KAMAU.....RESPONDENT

JUDGMENT

The appellant was the landlord of the respondent in business premises known as Eldoret Municipality/Block 6/72. By a notice dated 21st July, 1999, he sought to terminate the aforesaid tenancy on the ground that the tenant had defaulted in paying rent for a period of two months after the rent had become due and payable. The respondent filed a reference to oppose the said notice. The matter was heard by the Business Premises Rent Tribunal and respondent agreed that at the time when the said notice was served upon him, he was in arrears of rent for over four months and that he had not been regular in his rent payment.

The issue of payment of rent had been taken before the Senior Principal Magistrate's court which had allowed the respondent to pay some rent arrears by monthly installments of Kshs.10,000/-. That ruling was delivered on 19th June, 2001 and the respondent was clearly told that he had to keep on paying future rents promptly. The respondent, having admitted the existence of the said arrears of rent advanced some mitigating factors that has caused him to fall into arrears and prayed that his reference be allowed. The learned Chairman of the Tribunal found that the respondent was in arrears of rent but thought that the respondent had advanced reasonable grounds which had caused him to be in that situation. He allowed the tenant's reference and ordered the parties to bear their own costs of the matter. The appellant was aggrieved by the said determination and filed this appeal.

The appeal came up for hearing on 22nd March, 2004 and due to the absence of the respondent's advocate, the hearing of the same was adjourned to 22nd April, 2004 but on that day the respondent's advocate once again failed to attend court. Mr. Karanja advocate who held brief for Mr. Buluma, the respondent's advocate on 22nd March confirmed that he had informed Mr. Buluma that the appeal was to be heard on 22nd April, 2004. The appeal was therefore not opposed.

I have considered the grounds of the appeal, the proceedings of the Tribunal and the submissions made by counsel. I am of the view that the learned Chairman misdirected himself in arriving at his determination. He also took into account wrong considerations of law and fact. There was no dispute that the respondent was in arrears of rent for four www.kenyalawreports.or.ke months and had all along been irregular in payment of rent. In those circumstances, there were no proper grounds for allowing the reference. I allow the appeal and set aside the ruling of the Chairman of the Business Premises Rent Tribunal. The respondent shall pay the costs of this appeal and of the reference.

DATED, SIGNED & DELIVERED at Nakuru this 6th day of May, 2004.

DANIEL MUSINGA

AG. JUDGE

6/5/2004