



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 4769 OF 1988

JAMES GLENN RUSSELL LTD.....PLAINTIFF

VERSUS

RELI CO-OPERATIVE SAVINGS

& CREDIT SOCIETY DEFENDANT

JUDGMENT

The hearing of this case started before Hayanga, J (as he then was) and the first witness, the Managing Director of the Plaintiff company gave evidence in chief but was not cross-examined by the defendant's counsel. The Judge directed that further hearing dates be taken from the registry, and this was done and the case was placed before me for continued hearing as Judge Hayanga had retired from the Judiciary.

Today I deliver the judgment based on the evidence of the plaintiff and her one witness whose evidence I recorded on 3rd November 2003. The developments in terms of applications made after I had recorded that evidence appear in my Ruling dated 31st March 2004. The plaintiff's evidence was recorded by Hayanga, J on 8th May 2002. She described herself as the Managing Director of the plaintiff company, James Glenn Russell Ltd. She talked of a contract between her company and the defendant, Reli Co-operative Savings & Credit Society, which was in writing.

The plaintiff referred to a letter dated 17th November 1986 which she received appointing the plaintiff company managing agents of Reli Cooperative Building FINLAY House in Nairobi. The term of the management agency was for 5 years 3 months with an option to RENEW for the same period. The plaintiff signed the contract on 1st December 1986. She did not, however, have a copy of the contract because the defendants came to her offices 21 months later and ransacked the office. They came in a gang and forced her together with her employees out of the office. Giving the terms of the contract, she recalled that she was supposed to receive 5½ % commission on total rent collected; and would get one month commission on renting on every 18 months. She was to supply security people, the cleaners, buy materials for the cleaners lawyers to levy distress. She was also supposed to have a Secretary and take expenses from the rent.

The plaintiff used to work for the original owners of Finlay. She was in good terms with the Chairman of the defendant, a Mr. Otieno, who unfortunately got sick, and died and the plaintiff got a call from the Vice Chairman who said he was now the new Chairman. At his request, she had a meeting with

him and the treasurer. They basically wanted a bribe from her alleging that she used to bribe the late Chairman Mr. Otieno, but she denied. After this, they came to her office one morning carrying rungs, and physically evicted the plaintiff, when the cleaners were working. She made noise and the police came and escorted her out of the office. The plaintiff filed this suit subsequently and obtained an order directing that the rent be deposited in court. She produced a copy of the order in court as an exhibit.

The plaintiff lamented that all the things listed in the plaint were destroyed. The case was adjourned at that point, and no further evidence was recorded from the plaintiff. The next witness to give evidence was Edward Amisi Mose who was the Senior Sales Executive of the plaintiff company. He recalled the 12th October 1988 whilst working in the office, when a group of about 10 people from the defendant's company came and evicted them violently. They identified themselves. They took all the files, receipt books and other things. 200000444]]] e eeKKLLRR 4 The witness confirmed that his boss, Mrs. Terry Russell made a lot of noise which attracted the attention of people from the neighbouring offices who came. She also called the police who came and escorted her out of the office.

The witness confirmed further that her said boss filed a suit in court, and later got a court order on 1.12.88, which reinstated them back to the office.

On 7.2.89, auctioneers came to the office and also threw them out, saying they had not paid rent. The witness explained that they were not paying rent as they were the Managers of the same building. The auctioneers evicted them, took their furniture and locked them out. They have been out of the building since then. Both advocates made detailed submissions in support of their cases, though the defendant did not call any oral evidence for the reasons already stated.

The submissions filed on behalf of the plaintiff confirmed the oral evidence adduced in court, particularly the fact that the plaintiff and the defendant executed a written contract in which the plaintiff was appointed the Managing agents of the defendant's property known as Finlay House, situated on Mfangano Street Nairobi.

That the contract document was not produced in court by PW1 as all the documents, files etc etc were carried away by the defendants servants and or agents when they violently evicted the plaintiff out of the building, in breach of the terms of the contract. Further that for a period of 21 months, the plaintiff company performed "diligently and conscientiously" its part of the contract until 12th October 1988 when the defendant purported to terminate the terms of the contract by violently breaking into the plaintiff's offices. The plaintiff sought damages from breach of contract, and sought the loss suffered in terms of loss of commission from 12th October 1988 to 31st March 1992, at the rate of Kshs.50,000/= per month, plus one month's rent from 18 months of its management.

The plaintiff was said to have earned commission for 21 months work under the contract. The plaintiff also prayed for damages which the advocate assessed at Kshs. 5,000,000/=. The defendant's advocate on the other hand denied the plaintiff's claims and in its counterclaim prayed for judgment against the plaintiff for Kshs.100,000/= and accounts.

The defendant also denied the terms of the management contract in para 2 of the defence and vowed to put the plaintiff to strict proof on the terms of the alleged agreement. The defendant further stated that if there was any management agreement between parties, the same was terminated lawfully.

From the evidence on record, I am satisfied that the plaintiff was "thrown out" of her office by the defendant in the manner she described in court. This evidence was supported by her witness, PW2 her employee. Further from their evidence, I believe that the plaintiff and defendant had a management contract, though the same was not produced in court. I have accepted the evidence that it could not be produced because it was destroyed and or lost in the incident which occurred in the plaintiff's office.

The management contract was said to have run for only 21 months, though its life was supposed to be 5 years and 3 months. Because of this, I find that the plaintiff is entitled to compensation as worked out by her counsel in the written submissions – i.e. for the entire period of the contract which was terminated

“violently” as evidence shows. The plaintiffs 5.5.% monthly commission was Kshs. 50,000/=. The loss of commission which is special damages is therefore calculated as follows:- Kshs. 50,000 x 42 months = Kshs.2,100,000/=

To this, I will add general damages amounting to Kshs.500,000/=:, thus making a total of

Kshs. 2,100,000/= +

Kshs. 500,000/=

Kshs. 2,600,000/=

As the plaintiff was finally removed from the building by the auctioneers after the court had ordered that she be reinstated for that reason, I am unable to grant any orders of injunction as prayed.

I therefore find judgment for the plaintiff against the defendant in the total sum of Kshs.2,600,000/= plus costs and interest. I dismiss the defendant’s counterclaim as the same was not proved.

I direct that Interest on special damages – i.e. Kshs.2.1 million will be calculated from the date the suit was filed, i.e. 17th November 1988, till date of judgment, whilst interest on general damages will be calculated from date of judgment which is today (30 January 2004) till final payment.

Dated at Nairobi this 30th day of July 2004.

JOYCE ALUOCH

JUDGE