



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 69 OF 2003

JUMA MAKOKO ABDALLA.....PLAINTIFF

=V E R S U S=

CHRISTOPHER MUSOVYA.....DEFENDANT

JUDGMENT

In his plaintiff Juma Makoko Abdalla filed his suit against his former landlord Christopher Musovya, the Defendant. The claim as stated in the plaintiff that on or about in month of April 2001 the Defendant without notice removed the plaintiffs' household items and never returned them. The details of items are set out under paragraph 6 thereof with their values totaling Ksh. 1,932,401/=. Also taken are documents of the Plaintiff set out in paragraph 7 thereof.

The prayers thereof are for the sum of shillings 1,932,401/= and the return of the documents. The Defendant filed the defence and denied the plaintiff's claim. However, Defendant states that the Plaintiff was a tenant in his house in Maungu and he was in arrears of rent. Defendant carried out distress. The Defendant denies having seen any of the items listed under the Plaintiff paragraph 6. Further, the Defendant says the Plaintiff was charged and convicted for causing disturbance of damaging Defendants door and walls.

The Plaintiff gave evidence and produced exhibits. In his sworn statement he said he occupied the defendants premises as a tenant from 21/11/99 to 3/1/2000. There was criminal case against him. After trial he was bonded to keep peace for a year. He was in cells from 7/1/00 to 7/2/00 when he was given bond. When he reached home (in the premises of Defendant) he found that his workshop was locked up with 2 padlocks one by the Defendant. The Defendant refused to open saying the Plaintiff was security risk to him at the village. The Plaintiff slept outside for 6 days until a police vehicle came and he continued to sleep outside the gate of the workshop. In the month of March Plaintiff got a lift to travel to his home in Mariakani. He did not open the premises and his goods should be inside there.

The Defendant came to see Plaintiff after 9 days at Mariakani. He said there was storage charges to be paid amounting to 96,000/= or else the defendant will sell the goods which he did 2 months thereafter. The Plaintiff then started correspondence exhibited (a bundle of 7 letters.)

In the part of Defendant he led his evidence himself. He admitted tenancy. He admitted that when he Plaintiff took premises he had many goods carried by the Defendant's large mkokoteni - water tanks, taps and other items. There existed a Tenancy Agreement Exhibit D1. Six months deposit of 6000/= was paid on two occasions. Defendant heard noise in the Plaintiffs premises and on second time he called the police who came and arrested the Plaintiff. The Plaintiff locked the house and gave keys to one Abdalla to

look after his assets.

At this time when Plaintiff was in police custody the Defendant locked the rented premises with own key. When Plaintiff was released he was not to return to the premises but to go to his home in Mariakani. The Plaintiff came and slept out. So the Plaintiff never re-entered his premises and the two stories join here.

On 19/6/2000 the Defendant was claiming Ksh. 36,000/= by way of rent and vacant possession. The Defendant said the goods were still intact but there is rent outstanding to be paid.

He has employed watchman @ Ksh. 264,000/= to look after the goods. Defendant said if he is paid money he could release his goods to the Plaintiff.

After due consideration of evidence before the court, I find that the Defendant firstly reported to the Police who arrested Plaintiff for his complaint. When Plaintiff was in police custody the Defendant locked the premises let to the Plaintiff with all assets of the Plaintiff inside. When the Plaintiff was released he never returned to his premises and had no opportunity to collect his goods. He slept outside the premises for several nights and eventually he moved to Mariakani where he established his house.

In his sworn evidence the Defendant admitted that the goods are still in the premises and he is willing to return the same if arrears of rent is paid. The lawful arrears of rent are said to be Kshs.36,000/-. The Defendant is also talking of storage charges and expenses of employing the guard. I find it was the Defendant's fault that the goods were not collected by the Plaintiff. He refused to allow the Plaintiff to collect the goods. He is therefore liable to storage and security expenses.

In the circumstances I find the Plaintiff's claim proven on balance of probabilities. I enter judgment in his favour as prayed in the Plaint.

A sum of Kshs.36,000/- is to be deducted being the rent agreed due.

Judgment in the sum of Kshs.1,896,401 with interest at court rates against the Defendant.

Dated this 30th day of July, 2004.

JOYCE KHAMINWA

J U D G E

Read in presence of Plaintiff and Defendant

JOYCE KHAMINWA, J.

30/7/2004