



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.357 OF 2000**

**EXCELL ENTERPRISES LTD C/O MOHAMED MUIGAI &**

**MBOYA ADVOCATES.....PLAINTIFF**

**VERSUS**

**BLOCK HOTELS LTD.....1ST DEFENDANT**

**NORFOLK DEVELOPMENTS LTD.....2ND DEFENDANT**

**JUDGMENT**

The Plaintiff is a limited liability company incorporated and carrying on business in Kenya under the Provisions of the Companies Act Cap 468 Laws of Kenya. And the 1st and 2nd Defendants are also limited liability companies incorporated and carrying on business in Kenya under the Provisions of the Companies Act.

The 2nd Defendant was registered as proprietor as lessee from the Government of Kenya of Land Reference Number 37/146 Nairobi (herein referred to as premises)". Under a Lessee Agreement dated 18th March 1998 (herein referred to as "the Lease") the 2nd Defendant let the premises to the 1st Defendant for a period of 5 years and 6 months with effect from 1st April 1998.

Under Sale Agreement dated 16th April 1999 the 2nd Defendant sold the premises to the Plaintiff and a transfer was duly registered in favour of the Plaintiff. Under Clause 1(a) and (c) of the Lease Agreement the 1st Defendant was required to pay an annual rent of Shs.4,200,000/= quarterly to the 2nd Defendant for the first two years of the term. One instalment of Sh.1,050,000/= fell due on 1st October 1999. This instalment was paid to the 2nd Defendant instead of the Plaintiff who had become the new registered proprietor of the premises. This payment is the subject matter of this suit. The facts are not disputed.

The 1st Defendant had paid the rent to the 2nd Defendant when it was due. But the plaintiff claims that in paying the rent to the 2nd Defendant the 1st Defendant breached the Sale Agreement dated 16th April 1999. That Sale Agreement was between the Plaintiff and the 2nd Defendant.

The 1st Defendants' defence is that the payment of rent to the 2nd Defendant was in accordance with the terms of the Lease Agreement entered into between the 1st Defendant and the 2nd Defendant on 18th March 1998 and whose term had not expired and that it was not privity to the Sale Agreement between the Plaintiff and the 2nd Defendant. The 1st Defendant further stated that when the payment was done the Sale Agreement between the Plaintiff and the 2nd Defendant had not been brought to its attention. The 1st Defendant was not aware that the premises the subject matter of the Lease Agreement had been sold and transferred to the Plaintiff and the transfer had been registered. Nor was it aware that the remainder of the term of the lease had been assigned to the Plaintiff, the new owner when the rent was paid. Mr. Mwicigi counsel for the 1st Defendant submitted that the 1st Defendant could not have breached the terms of the Sale Agreement dated 16th April 1999 between the Plaintiff and the 2nd Defendant as claimed by the Plaintiff since the 1st Defendant was not privity to that Sale Agreement.

I agree with counsel that the 1st Defendant could not be accused of having breached the terms of the Sale Agreement a document to which it was not privity to. Since the Lease Agreement between the 1st Defendant and the 2nd Defendant had not expired, what the 2nd Defendant ought to have done was to draw a legal document to assign the remaining term of the lease to the Plaintiff after the sale and transfer of the premises. In the absence of such document the 1st Defendant had no legal obligation to forward the rent payment to the Plaintiff. The suit against the 1st Defendant is therefore not tenable and is dismissed

with costs.

The 2nd Defendant does not deny to have received the rent the subject matter of this suit from the 1st Defendant after it had sold and transferred the suit premises to the Plaintiff. It had no claim over that payment and therefore it ought to have forwarded the said payment to the Plaintiff immediately after receipt since it had sold the premises to the Plaintiff which had been registered as the new proprietor.

The Plaintiff has proved its case against the 2nd Defendant. I enter judgment in favour of the Plaintiff and against the 2nd Defendant for Ksh.1,050,000/= as prayed in the plaint with interest with effect from 1st October, 1999 until payment in full. I also award costs of the suit to the Plaintiff with interest from the date of Judgment until payment in full.

Dated and delivered this 1st day of October, 2004.

**J.L.A. OSIEMO**

**JUDGE**