



REPUBLIC OF KENYA IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT 119 OF 1998

FRANCIS MURINGU MUREU (T/A JEM CORNER BAR).....PLAINTIFF

VERSUS

JOHN MURANGURI KARUGA.....DEFENDANT

JUDGMENT

The Plaintiff was a tenant of the Defendant on premises known as Plot No. **Bahati/Kabatini Block 1/609** paying monthly rent of Kshs.1,800/- and was operating the business of a bar and restaurant. The Plaintiff was served with a Notice dated 7/11/97 by the Defendant's advocate. The notice was for termination of tenancy and was issued pursuant to the provisions of Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301 Laws of Kenya. Thereafter, the Plaintiff filed a reference on 8/1/98 and thereafter Business Premises Rent Tribunal Case No. 4 of 1998 was registered.

However, before the case was heard, the Defendant, who was then a police officer, moved into the aforesaid premises and removed all the doors to the buildings. That was done on 10/3/98. The plaintiff, through his advocates, wrote a letter dated 10/3/98 requesting the Defendant to refix the doors but the Defendant was unmoved by the said letter and instead he moved to the premises on 28/3/98 and threw out the plaintiff's stock of drinks. After a few days, the defendant returned the stock to the premises and began to use it. The Defendant even took away the Plaintiff's stock records.

The Plaintiff moved to the High Court and obtained an order for reinstatement into the said premises but the Defendant refused to obey it. Eventually the Business Premises Rent Tribunal Case was heard and the reference was allowed and the notice was dismissed with costs.

The Plaintiff therefore filed this suit and prayed for a perpetual injunction to restrain the Defendant from interfering with his quiet enjoyment of the suit premises until such time that the tenancy would be lawfully terminated and a mandatory injunction to compel the Defendant to restore the plaintiff to the suit premises. He also prayed for a declaration that the eviction was unlawful and for exemplary and punitive damages as well as costs of the suit.

The Defendant, in his defence, denied the Plaintiff's claim and stated that the plaintiff voluntarily moved out and handed over the premises to the Defendant. However, the Defendant attended court on the first day of the hearing and thereafter, neither himself nor his advocates showed up in court. The Plaintiff's testimony was therefore unchallenged and in my view the Plaintiff has proved his case on a balance of probabilities.

I have no hesitation in making a declaration that the said eviction was unlawful. The Defendant abused his position as a police officer at the material time to harass the Plaintiff by evicting him out of the rented premises unlawfully. I therefore order that the Plaintiff be reinstated to the suit premises forthwith and further grant an order of injunction to restrain the Defendant from interfering with the Plaintiff's quiet enjoyment of the premises until such time as the tenancy is lawfully terminated.

With regard to the Plaintiff's claim for damages, he stated that he suffered considerable loss as a result of the Defendant's unlawful acts. He said that he lost a gas cooker worth Kshs.9,650/-, six dozens of glasses valued at Kshs.1,560/-, a brief case valued at Kshs.740/-, 2 suits worth Kshs.4,400/-, 2 shirts worth Kshs.560/- and 12 pairs of staff uniforms worth Kshs.3,840/-. He further alleged to have had stock worth about Kshs.25,000/- and also claimed to have erected a bar counter costing Kshs.60,000/-.

However, the above sums were not specifically pleaded and claimed and neither were they proved as special damages and it is trite law that special damages must specifically be pleaded and proved and consequently I will not award any special damages.

Regarding general damages, the Plaintiff's learned counsel Mr. Karanja cited two authorities in support of his client's claim.

The first one was **NTHENGE VS WAMBUA [1984] K.L.R. 799** where the Plaintiff sued the defendants for damages arising out of illegal distress for rent on grounds that the second Defendant did not hold a certificate as required and that the first Defendant was liable for damages arising thereof as he had instructed the bailiff. It was held inter alia, that illegal distress involved trespass to goods and proof of the actual loss sustained was not necessary and the law gave one the right to recover damages not limited to actual damage suffered. The court awarded general damages for illegal distress, trespass and conversion at Kshs.18,000/-.

The other case was **EASTERN RADIO SERVICE & ANOTHER VS R.J. PATEL T/A TINY TOTS & ANOTHER [1962] E.A. 818** where a tenant was awarded Kshs.4,000/- as general damages for wrongful distress for rent.

The present case is not for wrongful distress for rent but for wrongful eviction and conversion but the aforesaid authorities are relevant.

The Defendant acted in a very callous manner and in total disrespect to the law by unlawfully evicting the plaintiff when a matter regarding possession of the suit premises was pending in the Business Premises Rent Tribunal and even after he was served with a court order requiring him to reinstate the Plaintiff into occupation, he refused to comply with the same. Fortunately for him, the Plaintiff did not apply for his committal to civil jail for contempt of court.

The Plaintiff prayed for punitive and general damages for unlawful eviction. I am persuaded that such damages are deserved in the circumstances of this case. I award punitive damages of Kshs.100,000/- and general damages for unlawful eviction of Kshs.200,000/-.

The Defendant will also bear the costs of the suit.

DATED, SIGNED & DELIVERED at Nakuru this 25th day of November, 2004

DANIEL MUSINGA

AG. JUDGE

25/11/2004