

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 426 of 2004

**RELISA HOUSING CO-OPERATIVE SOCIETY LTD.
.....PLAINTIFF**

VERSUS

GRACE ATIENO OKELO

JAMES OKELO ONYANGO

**T/A JOO FASHION MAKERS & GENERAL AGENCIES.....
DEFENDANTS**

RULING

The Plaintiff seeks an order under 0 XXXV for summary judgment against the Defendant on the ground that the Defendant is holding over as a trespasser in respect of a lease that expired on the 31st march 2004.

The lease in question was granted on the 1st July 1999 for a period of 5 years and 3 months from 1st January 1999 expiring thereafter on the 31st January 2004. The Defendant who was the tenant applied for a renewal which was denied.

The Defendant put in a defence and a counterclaim, and a Replying affidavit to that application.

The Defence denied the Defendant has used the full term and had only occupied the premises for 1 year and 10 months and the counterclaim is for the Defendant to be allowed to remain in the premises for a further period of up to 5 years and three months.

The reason why the defendant did not occupy the premises throughout the whole period is because he was evicted by a company called Padoja Enterprises although Mrs. Geruswa submitted that this was an agent of the Plaintiff there is no evidence of this.

Indeed the judgment in CC No 6266 of 1999 referred to in the Replying affidavit shows that the Learned Magistrate found a letter purporting to have been written by the Plaintiff was a forgery.

However this is academic as even if the Plaintiff had displaced the Defendant the remedy would be in damages.

The lease cannot be extended beyond its expiry date in the absence of any agreement to that effect.

In the result the Defendant not having vacated the premises on the expiry date became a trespasser in the premises.

In the result I grant the order sought for as prayed. I dismiss the Defendant's Defence and Counterclaim as having no merit or reasonable Defence to the claim.

The Plaintiff will have the costs

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER 2004

P.J RANSLEY

JUDGE