

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL CASE 462 OF 2001

ISAAC RIBIRO KAMERE PLAINTIFF

VERSUS

PATRICK NGANGA KAMAU DEFENDANT

JUDGMENT

By a plaint filed in court on 22nd March 2001, the plaintiff Isaac Ribiro Kamere sued the defendant seeking an order for eviction of the defendant, and any other person seeking the suit premises. The plaintiff also prayed for damages for illegal occupation. Exemplary damage for continued illegal occupation and costs of the suit. The defendant denied the plaintiff's claim, and claimed the building as his, as well as all the tenants.

The plaintiff moved the court to strike out the defence described as "a sham" and the same was struck out on 25th February 2002, and judgment was entered for the plaintiff.

The plaintiff is a farmer, and a registered proprietor of land L.R No. Githunguri/Githunguri/1310. He produced the original title deed. The plaintiff sued the defendant who sold to him building materials worth Kshs.220,820/= and he in turn allowed the defendant to collect building materials from 35 rooms, situated on the plot. The rent was Kshs.200/= per room. This was in 1992.

In 1993 the rent rose to Kshs.250/= per room and in 1994, Kshs.300/= per room per month. To date the rent charged is Kshs.1000/= per room; per month.

The plaintiff stated that the defendant had fully paid himself by 1994, the sum of Kshs.220,820/=but has continued to collect rent. The plaintiff testified further that in 1993, the defendant filed a suit against him, being HCCC No. 4374 of 1993, claiming this piece of land. However, the defendant subsequently withdrew the suit. The plaintiff produced the decree as an exhibit in court. The defendant filed another suit in 1996, seeking an extension of time to apply for Githunguri Land Control Board for sale of ¼ acre of the suit premises. This was HCCC No.119 of 1996. The court dismissed the application on 21.6.2000. Again the plaintiff produced the decree as Ex. 3.

On 21.1.98, the plaintiff wrote to the defendant to stop collecting rent for the tenant. He also wrote to the tenants. He produced copies of both letters as exhibits in court. The defendants lawyer on record at the time Mr. Mwichgi Kinuthia wrote to the tenants directing them to ignore the plaintiff's notice and continue to pay rent to the defendant. This letter too was produced as an exhibit.

The defendant changed advocates about 3 times. All of them wrote to the tenants advising them not to pay rent to the plaintiff. The plaintiff issued a demand notice to the defendant to vacate his plot and also stop collecting rent. He produced the letter as Ex. 9. He was forced to file this suit, when the defendant refused to act on his notice. The plaintiff applied for the defence filed by the defendant to be struck out, and this was done. He sought an order directed at the defendant to vacate his land. He also prayed for costs of the suit. The plaintiff's evidence was not opposed. Also, there was no defence on record, so I accept the plaintiff's evidence as true, in the circumstances. Though the plaintiff prayed for damages for illegal occupation, he did not urge this during the hearing, neither did he urge the prayer for exemplary damages.

In the circumstances, I find judgment for the plaintiff against the defendant as prayed in the plaint in and prayers (a) (b). I also award the plaintiff costs of the suit.

I have declined to award damages under prayers © and (d) of the plaint, for the reasons given above.

Dated at Nairobi this 31st day of July 2003.

JOYCE ALUOCH

JUDGE