

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 274 OF 2001

SAMUEL MBUGUAAPPELLANT

V E R S U S

CHARLES GATONYE GICHINGA.....RESPONDENT

JUDGEMENT

This is an appeal against the judgement of the Chairman Rent Tribunal dated 23.5.2001 in which she entered judgment for the Plaintiff/Respondent for the payment of rent arrears of Kshs.13,000/- and ordered that the Appellant give immediate vacant possession. The Appellant has preferred 10 grounds of appeal which were argued by Miss Ndirangu. The Appellant's first ground is that the Chairman erred in considering the evidence of the Respondent selectively and ignoring that of the Appellant, secondly, that the Chairman erred in giving an order of immediate vacant possession which order was not prayed for in the Plaint, that it is wrong for the Chairman to enter judgement for the rent owing of Kshs.13,000/- when the Landlord had himself closed the suit premises. There were other grounds but they were not pertinent.

The Respondent who narrated the events leading to the filing of the suit maintained that the Chairman's ruling was impeachable and that he closed the premises because the Appellant had gone away.

Having heard Miss Ndirangu and the Respondent, I think I can decide this appeal on two of the grounds of appeal. The Chairman ordered immediate vacant possession but the Plaintiff only asked for recovery of rent arrears of Kshs.13,000/- costs and affixation of summons. It was not open to the Chairman to raise and determine the suit on an issue which was not canvassed before her or pleaded.

In the Court of Appeal Civil Appeal No 274 of 1997 KENYA COMMERCIAL BANK LIMITED vs. MWAMBAU MBALUKA & ANOTHER, the Court held that;

“The trial Judge by raising and determining the suit on an issue which was neither pleaded nor evidence adduced” was done in error.

Relief claimed in a Plaint occupies special position in a pleading and must be clearly stated and so the Court must consider those claims but not to impose its own relief and claim.

Secondly looking at the Judgment, it is clearly outside the stated form under Order 20 Rule 4 of the Civil Procedure Rules which requires judgment in Defended suits to contain inter alia a concise statement of the case, the points for determination the decision thereon and the reasons for such decision.

The decision herein does not contain points for determination, the points for determination or the reasons for such decision.

I think for these reasons, this judgement cannot be sustained and is therefore, set aside.

Appeal succeeds with costs.

DATED this 25th day of July 2003.

Read to Mr. Thiga holding brief for Miss Ndirangu for Applicant

No appearance for Respondent

A.I. HAYANGA

JUDGE