

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 543 OF 2000

JULIUS MWOVA KYONDO.....PLAINTIFF

VERSUS

WILLIAM KEA KASHURU.....DEFENDANT

R U L I N G

The applicant has come to court seeking summary judgement in the sum of shs. 120,000/- plus costs and interest as prayed in the plaint. The grounds upon which the claim is made is that the defendant has no defence to the claim. The application dated 20-5-2002 and which is supported by affidavit of the plaintiff confirms that the claim arises out of agreements made between the parties on 28-2-96 and 27-8-96.

The circumstances under which the agreements were made are clearly explained in the supporting affidavit and the annexures attached. I have perused the Replying Affidavit. There is no answer to the plaintiff's claim the agreement exhibited by the plaintiff. The proceedings in CMCC No. 1205/98 and orders made are still standing. No appeal has been made against the orders. There is no doubt that the plaintiff was in possession of the defendant premises and the defendant took the law in his hands to recover possession and he agreed to pay shs. 150,000/- to the plaintiff to compensate him for canceling the agreement of tenancy for the agreed period of five years in advance. The said sum was in respect of constructions carried out by plaintiff in the premises.

In the circumstances I find no merit in the defendants defence or Replying Affidavit. In respect of the claim for balance of shs. 120,000/- now claimed. I therefore allow the application and enter judgement for shs. 120,000/- plus interest and costs. Since there is a balance of unproved claim under the plaint I order that execution of this judgement shall await the full judgement in this suit and the taxation of costs if any.

Dated 23-8-2002.

HON. J. KHAMINWA
LADY COMMISSIONER

