



REPUBLIC OF KENYA  
 IN THE HIGH COURT OF KENYA  
 AT MOMBASA  
 CIVIL APPEAL NO.137 OF 2000  
 SHABBIR MOTOR SPARES LTD.....APPELLANT

=V E R S U S=

MOHAMED 1. SAID SALIM

MOHAMED 2. MOHAMED SALIM

MOHAMED..... 3. ABDALLA SAIM  
 MOHAMED.....RESPONDENTS

JUDGMENT OF COURT

The Business Premises Rent Tribunal constituted under the provisions of Chapter 301 of the Laws of Kenya and sitting at Mombasa, delivered a judgment dated 24th November, 2000 in the Tribunal Case No.58 of 1998. The reference to it had been made by the Tenant who also is the Appellant herein. The Landlord of the premises known as Plot No. Block XVII/490 Mombasa had served the Appellant/Tenant with a Notice under S.4(2) of the Act, to terminate the tenancy. The notice read as follows:-

*“I Y.A. Ali Advocate on behalf of Said Salim Mohamed, Mohamed Salim Mohamed and Abdalla Salim Mohamed ..... the Landlord of the abovementioned premises, hereby give you notice terminating your tenancy with effect from 1 st day of September, 1997.....”*

*The ground(s) on which I seek the termination are THAT YOU ARE HIGHLY IRREGULAR IN THE PAYMENT OF RENT AND AT PRESENT YOU ARE IN RENT ARREARS AMOUNTING TO KSHS.22,300/- BEING ARREARS OF RENT FOR JANUARY 1997*

*(balance 2,300), FEBRUARY TO MAY 1997 AT KSHS.5000 PER MONTH .....*”

The Appellant responded by filing a Tribunal Reference from which this appeal arises. The Tribunal heard the case and made the following findings:-

“(a) That it was difficult to prove that there were two months arrears of rent at the time when the termination notice was served upon the Tenant/Appellant. But:

(b) That evidence on persistent delay in the payment of rent was however overwhelming.”

Upon the second ground of persistent delay in the payment of rents, the Tribunal found for the Landlord and dismissed the Appellant’s reference. It ordered the Tenant/Appellant to vacate the premises and hand possession over to the Landlord on or before 31.12.2000. The tenant appealed to this court on four grounds which can be summarized into two grounds:-

1. That the Tribunal based its finding on the grounds not contained in the Notice of the termination of the tenancy thus relying on extraneous grounds and evidence.

2. That the Tribunal erred in awarding costs to the Respondents

. To get an answer to the first ground, we have to examine the notice already cited herein above. Examination of the same confirms that termination was sought on two grounds:-

a) Irregularity in the payment of rent by the Appellant herein; and

b) Being in arrears of at least two months rent.

There is no dispute that the Tribunal made a finding that there was no adequate evidence to support the 2nd ground above. On the other hand it found that there was more than ample evidence that the Appellant was very irregular in paying its rent. On several occasions which are pointed out in the evidence, the Appellant gave in payment of rent cheques which eventually were dishonoured. So much so that the Respondent had to resort to levying distress to recover the rent due. There is no denial of the defaults by the Appellant in its evidence in the lower court. We therefore find that the Tribunal’s finding on this issue was sound and was based on ample evidence before it. We find no reason to disturb the finding. Having come to that conclusion, the only other issue for consideration in respect to this ground of appeal is whether or not the language or phrase used in S.7(1)(b) of cap.301 which states the ground for termination –

i.e.....”has persistently delayed in paying rent which has become due”

is different from the one used in the relevant notice, the subject of this appeal i.e. –

“.....You are highly irregular in the payment of rent .....

It is our view and our finding that being “highly irregular in payment of rent” has the same meaning as “failing to pay rent regularly”. This would mean, failing to pay rent at the dates agreed between the parties. It cannot mean, failing to pay once or twice. It means failing to pay from time to time, several times. The word “Persistent” used in the section, in the ordinary English dictionary means – constantly, repeatedly. In this case it is in evidence, which is not really denied, that the Appellant failed to pay its rents persistently or repeatedly, ending up with the levying of distress for rents. The Tribunal’s finding was accordingly proper and was adequately supported by evidence. We see no good reason for interfering with these findings which we think were arrived at after properly taking into account, by the Chairman, the evidence of both parties.

We accordingly confirm the Chairman’s findings.

The second ground of appeal is on costs being allowed in favour of the Landlord/Respondent. The said costs followed the event. We see no error in the Chairman’s order. The Appellant pointed out none. This ground also has to fail.

The upshot is that this appeal must and is hereby dismissed with costs to the Respondent.

Dated and delivered at Mombasa this 11th day of June, 2002.

D. A. ONYANCHA

J U D G E

P. TUTUI

COMMISSIONER OF ASSIZE

Delivered in the presence of:

.....for Appellant/Tenant

.....for Respondent/Landlord