



REPLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CIVIL CASE NO. 1887 OF 1998

AKBER SULEIMAN SIDI.....1ST PLAINTIFF

KULSUM AKBAR SIDI..... 2ND PLAINTIFF

KASSAM GULAMHUSSEIN ADAM.....3RD PLAINTIFF

V E R S U S

ESMAIL SULEIMAN SIDI.....DEFENDANT

J U D G M E N T

This case is now coming up for formal proof. An interlocutory judgment has already been entered against the Defendant in default of filing a defence within the prescribed time.

All the three Plaintiffs testified in this court. The first Plaintiff produced the following documents:-

- (a) Copy of the title document in respect of L.R. No. 209/4300/106 (hereinafter referred to as “the suit land”). The original of this was shown to the court;
- (b) a copy of the lease between the 1st and 2nd Plaintiffs on the one hand and the 3rd Plaintiff on the other. The original was cited.

The evidence as a whole shows that the 1st and 2nd Plaintiffs were the registered owners of the suit land. It is also clear that the 1st and 2nd Plaintiffs had leased to the 3rd Plaintiff a Guest House, Store besides the main building and two car parks on the suit land. Under the lease, the 3rd Plaintiff was to hold for a term of one year from 1st September, 1997 to 31st August, 1998 at a monthly rent of K.shs. 4,167/= with an option to renew. The testimony of all the Plaintiffs is that the Defendant threw the 3rd Plaintiff out on 1st June, 1998. The 3rd Plaintiff further stated that as a result of his eviction, he was compelled to seek alternative residence at a rent which was K.shs. 5,000/= more than he was paying as the 1st and 2nd Plaintiffs’ tenants.

There is no doubt that the 1st and 2nd Plaintiffs are the registered owners of the suit land. They were entitled to lease a part thereof to the 3rd Plaintiff. The Defendant did not have any right to evict the 1st and 2nd Plaintiff’s tenant. His act was unlawful. The 1st and 2nd Plaintiffs are entitled to the vacant possession of the suit land and they are hereby granted the same as prayed.

Due to the Defendant’s unlawful act, the 1st and 2nd Plaintiffs have been denied income in the form of rent which they would have received from the 3rd Plaintiff. They are, therefore, entitled to mesne profits against the Defendant. The 1st Plaintiff stated in his testimony that this claim was for the period between 1st June, 1998 (when the 3rd Plaintiff was unlawfully evicted by the Defendant) until 30th April this year. This is a total of 34 months. As has already been seen, the monthly rent was K.shs. 4,167/= plus taxes of K.shs. 833/= making a total of K.shs. 5,000/= per month. The claim for mesne profits will, therefore,

work out as follows:-

$$\text{K.shs. } (5,000 \times 36) = \text{K.shs. } 180,000/=$$

The 3rd Plaintiff's claims for broken furniture and fittings and for the extra rent he had to pay upon eviction must be dismissed as no special proof of that loss was shown to this court.

The 1st and 2nd Plaintiffs travelled from Canada to attend for this case. They both claim Canadian \$1,500 each being their travel costs, the exchange rate between the Canadian \$ and the K.shs. being 1: 47.5. In my view, it was unnecessary for both the 1st and 2nd Plaintiffs to travel here for this case. Since they are joint owners of the suit land the presence of either of them could have been sufficient for this hearing. I will, therefore, allow travel costs for only one of them. That will work out as follows in K.shs. K.shs.

$$(1,500 \times 47.5) = 71,250/=$$

I, therefore, enter judgment for the first two Plaintiffs as follows:-

(a) Vacant possession of the Guest house as prayed in the Plaint.

(b) Special damages: (i) Mesne profits K.shs. 180,000/=

(ii) Travel Expenses K.shs. 71,250/=

T O T A L K.shs. 251,250/=

=====

The Plaintiffs are also awarded the costs of this suit.

DATED and DELIVERED at NAIROBI this 24th day of May, 2001.

ALNASHIR VISRAM

JUDGE.