



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC CASE NO. 266 OF 2018

THE BOARD OF MANAGEMENT OF CHRISTIAN

INDUSTRIAL TRAINING CENTRE.....1ST PLAINTIFF

CHURCH COMMISSIONERS FOR KE.NYA

(TRUSTEES OF THE ANGLICAN CHURCH OF KENYA)..... 2ND PLAINTIFF

-VERSUS-

DAVID MUTURI MUNGAI..... DEFENDANT

JUDGMENT

(Plaintiff filing suit seeking vacant possession of premises, payment of rent and payment of utility bills; defendant having been employed by the plaintiff and provided with a staff house; defendant's employment subsequently terminated after defendant obtained employment with the Government; plaintiff now wishing to have back the staff house since defendant no longer its employee; defendant continuing being in possession of the staff house without paying rent; defendant raising issue that his continued stay in the premises is justified because the issue of his terminal dues not resolved; right to remain in premises ended with the termination of employment as the premises are meant for staff; question of employment benefits after termination being an issue that can be pursued before the Employment and Labour Relations Court for resolution and not a justification for continuing to be in possession without paying any rent; judgment entered for the plaintiff for vacant possession, accumulated estimated rent and unpaid utility bills)

1. This suit was instituted by way of a plaint filed on 9 November 2018. The 1st plaintiff is the Board in charge of management of the Christian Industrial Training Center (hereinafter, 'the institute') which is a tertiary institution owned by the Anglican Church of Kenya. The 2nd plaintiff is the trustee of the Anglican Church of Kenya and owns the institute and the registered owner of the property Mombasa/Block X/435 (the suit property). On the suit property, the plaintiffs have erected the institute and staff houses. It is the case of the plaintiffs that during the period of 1 May 1989 and March 2012, the defendant was the employee of the 1st plaintiff and he was offered staff housing on the suit property. The plaintiffs plead that at the end of March 2012, the defendant voluntarily took up employment with the Government, and thus ceased to be an employee of the 1st plaintiff. Accordingly, the defendant was given notice to vacate the staff house but he has refused to vacate. The plaintiffs contend that the rent due from the defendants from March 2012 to April 2018 has accumulated to Kshs. 635,000/= and there is an outstanding electricity bill of Kshs. 17,183.20/=. In this suit, the plaintiffs seek the following orders :-

a) An order of mandatory injunction to compel the defendant to vacate the two bedroomed house situated on Mombasa/Block X/435 within the Christian Industrial Training Centre in Mombasa County within 30 days of this order in default of which the plaintiffs be at liberty to evict the defendant therefrom.

b) Kshs. 652,182.20 on account of rent arrears and unpaid electricity bill.

c) An order directed at the defendant to pay all outstanding rent and utility bills as at the date of vacating the suit premises or being evicted therefrom.

d) Interest on (b) and (c) above at court rates from the date of filing until payment in full.

e) Costs of this suit.

f) Any other and further reliefs this court may deem just to grant.

2. The defendant entered appearance, but there is controversy as to whether or not a defence was filed, as the defence on record was received by the Chief Magistrate's Court. Be that as it may, the plaintiffs filed an application dated 3 September 2019 seeking judgment to be entered for the liquidated amount of Kshs. 652,182.20/= and the matter to proceed for formal proof on the ground that no defence has been filed. The defendant did not oppose the application, and the application was allowed as prayed on 4 February 2020.

3. The matter came up for hearing on 12 April 2021. The plaintiff called one witness, James Mburu Kimani the manager to the institute. He relied on his witness statement which more or less repeated what is in the plaint. Among the exhibits he produced were the title to the suit property; a letter dated 31 July 2017 through which the 1st plaintiff asked the defendant to vacate its house by end of December 2017; another letter dated 6 December 2017 where the defendant was reminded that he needed to vacate the staff housing; a letter dated 20 March 2018 by the 1st plaintiff informing the defendant about his outstanding electricity bill; another letter dated 2 March 2018 where the defendant was given more time till end of March 2018 to vacate; a letter dated 7 February 2013 from the defendant to the 1st plaintiff pleading to live rent free, and a demand notice.

4. Cross-examined, he testified that the defendant was absorbed by the Ministry of Youth Affairs in 2012 and was attached to the institution until the year 2016. He was not privy to the terms and conditions of his employment with the Ministry but he had been released by the plaintiffs. He met the defendant in 2017 when he joined the 1st plaintiff. He was cross-examined on a letter dated 15 August 2016 written by his predecessor, one Joseph Mangoro Kashuru. The letter was addressed to the defendant, and the subject of the letter was unpaid dues in favour of the defendant. In the letter, it was mentioned that there would be a meeting to discuss the same. No meeting has ever been held by the defendant and no payment of dues has been made to the defendant. There was also a letter dated 7 December 2016, written by Mr. Kashuru, advising the defendant to continue staying in the house until further notice. He testified that on 31 July 2017, he (PW-1) gave the defendant a 6 months notice to vacate but the defendant did not vacate. On the claim for rent, he testified that they had no written agreement and what they have claimed is the rent that they charge for other houses in their premises. He acknowledged that what the defendant claims as terminal dues is disputed and is yet to be settled. He explained that the reason they have made a claim for electricity is because the account is in the name of the plaintiffs and they pay on behalf of the defendant.

5. With the above evidence, the plaintiffs closed their case. The defendant did not attend court to testify and did not call any witness. I directed that counsel file written submissions and they both did.

6. In his submissions, Mr. Oluga, learned counsel for the plaintiffs submitted inter alia that where a party elects not to file a defence, then the matter proceeds as undefended and whatever the plaintiff pleads becomes the truth in the matter. To support his submission, counsel referred me to the case of *Petra Development Services Ltd vs. Evergreen Marine (Singapore) Pte Ltd & another (2018) eKLR*. Counsel submitted that the allegations in the plaint were uncontroverted and remain to be the truth in this case. He further submitted that even though the defendant's counsel chose to cross-examine the plaintiff, the same should not be regarded as evidence to disprove the plaintiff's allegations and cited the case of *Catholic Medical Mission Board vs. Mombasa Maize Millers Kisumu Limited (2020) eKLR*. He submitted that the facts in the plaint being uncontroverted, the only issue for determination is the award of the prayers in the plaint. Counsel submitted that this court has dealt with a similar case involving the defendant's colleague, being the case *Board of Management of Christian Industrial Training Centre & Another vs. Silas Buko Tunu (2020)eKLR* where judgment was entered for the plaintiffs, and he submitted that this case should apply *mutatis mutandis*.

7. Learned counsel for the defendant, Mr. Mkan, submitted that the plaintiffs being owners of the staff house, had every reason to issue eviction notices, but the same could only be effected once the issue of the defendant's dues were resolved, since that was the mutual agreement. Counsel submitted that an agreement between parties can only be varied by the same parties or by an order of the court, and in the absence of either, the said notice is invalid. He submitted that the rent payable must be proved and nothing has been placed or exhibited to convince the court on amount of rent payable per month. He submitted that the electricity bill can only be claimed by Kenya Power, and the same company has ways to ensure that electricity consumed is paid, and if the same is not paid, the company disconnects electricity. Counsel submitted that the plaintiffs have not indicated if action was taken by Kenya Power against them. He submitted that there is no electricity bill issued to the defendant for unpaid electricity to enable the plaintiffs' claim succeed.

8. I have considered all the above. I will start with the liquidated claim. My hands are tied on this point, for the application dated 3 September 2019, seeking judgment to be entered for the liquidated amount of Kshs. 652,182.20/= was allowed. The only issues left are the orders for mandatory injunction to have the defendant vacate the suit premises, or be evicted; and the orders for payment of outstanding rent and utility bills at the date of vacating the suit premises.

9. I will be brief in my delivery because to me the issues are clear and straightforward. The defendant was a member of staff of the plaintiffs and by virtue of his employment, he was offered staff housing as a benefit. It follows that this benefit ceased from the moment that the defendant ceased being an employee of the defendant. From that time onwards, the defendant remained in possession at the mercy of the plaintiff. He could not live for free, and despite there not being a formal tenancy agreement, I cannot fault the plaintiff for claiming what it considers to be reasonable rent from the defendant. The defendant has from the time he stopped being an employee of the plaintiff, in the year 2012, to date, continued to be in possession of the suit premises without paying rent. From what I can discern, his excuse is that there are some pending terminal benefit dues. I do not see how the issue of pending dues is related to his continued stay in the suit premises. Nothing stops the defendant from filing a suit in the Employment and Labour Relations Court for the computation of his terminal dues in the event that there is a dispute. The fact that there is a dispute over his terminal dues is not sufficient reason to have the defendant insist on living in the premises of the plaintiffs, without paying any rent, when he is no longer their staff member. I am aware that there are some letters which appear to inform the plaintiff to continue staying in the house as the issue of the dues is being resolved but this letters were rendered otiose after the defendant issued, on 31 July 2017, the 6 months notice to vacate. That was adequate notice to the defendant to give vacant possession. He did not, hence this suit.

10. I have already mentioned that I see no good reason why the defendant should continue living in the plaintiffs' premises while he is not their staff member. This is staff premises and the plaintiffs may need the same to house their other staff. I have no reason not to allow the prayer for a mandatory order to have the defendant remove himself from the suit premises. I allow that prayer and I order the defendant to give vacant possession within 30 days from the date of this judgment. If he does not do so, then he be forcibly evicted.

11. There is a claim for accumulated rent. I was informed that other persons pay rent of Kshs. 10,200/= per month. Although no documentary proof was provided, I have no reason to doubt the plaintiff, as this appears to me to be reasonable rent for a two bedroomed house in Mombasa Town. In any event, the defendant has not tendered any evidence to the contrary. I am thus persuaded to enter judgment for the sum of Kshs. 10,200/= per month, as rent, from the time of filing suit to the time that vacant possession will be given. Interest will accrue from the date of this judgment. There is the other prayer for unpaid electricity bills which the plaintiff avers result from the defendant's electricity consumption. I appreciate Mr. Mkan's submissions that no bill was tendered. I cannot therefore enter judgment for any specific sum. However, that does not mean that the defendant is not liable to pay for electricity that he has consumed. Therefore, I will order the defendant to pay all accumulated power bills at the time of giving vacant possession and any other utility bills. If he does not pay, and the plaintiffs are forced to make payment, then the plaintiffs are at liberty to execute for the same against the defendant.

12. The only issue left is costs. They will follow the event. The defendant shall pay the costs of this suit.

13. Judgment accordingly.

DATED AND DELIVERED THIS 13TH DAY OF OCTOBER, 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA