



Koira Limited v My Space Management Properties Limited (Civil Suit E036 of 2024) [2024] KEHC 13952 (KLR) (11 November 2024) (Judgment)

Neutral citation: [2024] KEHC 13952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E036 OF 2024
JK NG'ARNG'AR, J
NOVEMBER 11, 2024**

BETWEEN

KOIRA LIMITED PLAINTIFF

AND

MY SPACE MANAGEMENT PROPERTIES LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff through a Plaint dated 19th April 2024 prayed that judgment be entered against the Defendant for a declaration that the Defendant breached the agreement with the Plaintiff relating to the management of the Plaintiff's property, an order directing the Defendant to pay the Plaintiff the sum of Kshs. 17,124,801 being the unremitted rental income collected from September 2020 up to September 2022, an order directing the Defendant to pay the Plaintiff the sum of Kshs. 26,600,000 being the rental income collected from October 2022 to April 2024, costs of this suit, and interest from the date of filing of the suit until payment in full.
2. That at all material times to the suit, the Plaintiff had been in lawful occupation of the building known as City House erected on the parcels of land known as Mombasa/Block XXI/151, Mombasa/Block XXI/152 and Mombasa/Block XXI/498 being the duly registered lessee of the property. That the Plaintiff got into an agreement with the Defendant on or about 1st September 2020 and formally engaged the Defendant to be the property manager of the premises and it was expected that the Defendant would collect rent from the tenants, pay all expenses and remit the balance to the Plaintiff without unreasonable delay, attend to the needs of the tenants, ensure the premises is in a good state, and do everything necessary to protect the rights of the Plaintiff as the landlord.
3. That however, the Defendant was not remitting the rent collected in full. That for the period between September 2020 to September 2022, the Defendant collected the sum of Kshs. 32,319,567 and out of the total rent collected, the Defendant only remitted Kshs. 15,194,766 leaving a balance of Kshs. 17,124,801 which they withheld. That the rent collected on a monthly basis is upwards of Kshs.



1,400,000 which amount is on the lower side, and therefore for the period commencing October 2022, the Defendant had collected at least Kshs. 26,600,000.

4. The Plaintiff avers that the Plaintiff's directors have physically visited the premises on several occasions to follow up on the rent issue but the Defendant has failed to offer a proper account as to the rent collected since they commenced management of the property. That after several visits and follow-ups, the Defendant only remitted Kshs. 1,800,000 out of the colossal sum. That despite several pleas, reminders, demands and intentions to sue, the Defendant has refused, neglected and/or ignored to remit the balance of the rental income from September 2020 to the time of filing the suit.
5. On 22nd October 2024, the matter proceeded with formal proof hearing where two witnesses of the Plaintiff adopted their witness statements and produced documents as exhibits in support of the averments in the Plaint. The Defendant failed to enter appearance and/or file defence despite been duly served. The court gave direction for filing of submissions.
6. The Plaintiff in their submissions dated 29th October 2024 argued that the Defendant breached the agreement dated 1st September 2020. The Plaintiff relied on the holding in *M'Bita Ntivo v Mbae Mwiricha & Another* (2018) eKLR in submitting that they had proved their claim to the required standard. On whether the claim for interest is merited, the Plaintiff cited the case of *Centre for Mathematics Science and Technology Education in Africa (CEMESTE) v Apex Security Services Limited* (2021) eKLR and argued that the Plaintiff is entitled to interest on the sums and the same should accrue from the date of filing of the suit. On the issue of costs, the Plaintiff submitted that costs follow the event pursuant to Section 27 of the *Civil Procedure Act* and that this court has the discretion to award costs to a successful litigant. That therefore, the suit as filed is merited and should be allowed as prayed.
7. Upon consideration of the evidence before this court, I find that the Plaintiff has proved their case against the Defendant on a balance of probability. I am satisfied that the Defendant is in breach of the agreement dated 1st September 2020 and is entitled to pay Kshs. 17,124,801 being unremitted rental income collected from September 2020 up to September 2022 and Kshs. 26,600,000 being rental income collected from October 2022 to April 2024 plus costs and interest from 24th May 2024.
8. I therefore enter judgment for the Plaintiff as against the Defendant as prayed in the Plaint.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 11TH DAY OF NOVEMBER, 2024.

J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

Okullo Advocate for the Plaintiff

No appearance Advocate for the Defendant

Court Assistant – Mr. Samuel Shitemi

