



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 787 OF 2015

MARGARET KINARO KIMERE T/A NYOTA TANOPLAINTIFF

=VERSUS=

KENYA PLANTERS CO-OPERATIVE UNION.....1ST DEFENDANT

ELDORET EXPRESS LIMITED.....2ND DEFENDANT

JUDGMENT

Plaintiff's Case

1. The plaintiff brought this suit on 14/8/2015 through a plaint dated 12/8/2015. Her case was that, in March 2000, she became a tenant of the 1st defendant in respect of 3890 square feet within a building erected on Land Reference Number 209/1727 (**the suit property**) situated along Haile Selassie Avenue, Nairobi. The tenancy relationship continued beyond the initial term of 5 years and 3 months. She continued to pay, and the 1st defendant continued to receive rent from her until 13/4/2015 around 3.00 am (at night) when the 2nd defendant's agents unlawfully and forcefully evicted her from the suit property and demolished the demised premises while her belongings were still in the premises. At the point of eviction, she learnt from the 2nd defendant's agents that the 1st defendant had sold the suit property to the 2nd defendant in the year 2007.

2. The plaintiff contended that neither of the two defendants gave her notice of termination of tenancy or notice to vacate the suit premises. She itemized the following particulars: (i) particulars of unlawful conduct attributed to the 2nd defendant; (ii) particulars of carelessness, unlawfulness and breach of tenancy attributed to the 2nd defendant; and (iii) particulars of special damages attributable to the conduct of the defendants.

3. The plaintiff, consequently sought the following verbatim reliefs against the defendants jointly and severally: (a) special damages of Ksh 8,125,000 as pleaded in paragraph 14 of the plaint with interest from the date of filing the suit; (b) general damages; (c) costs of this suit; (d) any other order the court may deem fit to grant.

Case of the 1st Defendant

4. The 1st defendant filed a statement of defence dated 13/10/2015 in which it denied the plaintiff's claim. The 1st defendant's case was that the plaintiff was a month to month tenant (tenant at will) paying monthly rent to the 1st defendant up to August 2009. From August 2009, the plaintiff paid rent to the receiver manager who had been appointed to manage the 1st defendant. It admitted selling the suit property to the 2nd defendant in October 2007 and contended that the suit property was sold subject to the condition that possession was to pass only after the 2nd defendant had paid the purchase price in full and because the 2nd defendant had not paid purchase price in full, the 1st defendant had not granted the 2nd defendant vacant possession as at the date of the defence.

5. The 1st defendant denied terminating the plaintiff's tenancy and contended that there was no need to issue a notice to the plaintiff to vacate the suit property because it had not terminated the plaintiff's tenancy. It further averred that the rents paid by the plaintiff and received by the agent before, during, and after receivership period or after the property was sold to the 2nd defendant, were lawfully received by the 1st defendant's agent because vacant possession was yet to be granted to the 2nd defendant. It further averred that the sale of the suit property to the 2nd defendant was subject to the Law Society Conditions of Sale (1989 Edition) and the subsisting tenancies were subject to the Law Society Conditions of Sale (1989). It urged the court to dismiss the claim against it.

Case of the 2nd Defendant

6. The 2nd defendant filed a statement of defence dated 23/11/2015. It denied the plaintiff's claim against it. Its case was that on 14/9/2010,

it served all the tenants (the plaintiff included) and also posted in all prominent places of the suit property, a notice for payment of rent. The tenants declined to pay rent to its agent. It filed Milimani CMCC 7494 of 2003 seeking vacant possession of the suit property. The plaintiff and all other tenants were served with both the notice and the court order. Daystar Auctioneers were instructed to carry out eviction to secure vacant possession. The auctioneer followed the laid down procedures. All the tenants, the plaintiff included, were allowed to remove their properties from the suit property. The 2nd defendant further contended that, being the registered proprietor of the suit property, it carried out the demolition after all the tenants, the plaintiff include, had removed their properties from the suit property. It urged the court to dismiss the plaintiff's suit.

Evidence

7. Hearing commenced on 21/2/2018. The plaintiff testified as PW1. She adopted her written statement dated 12/8/2015 as her sworn evidence in chief. Her evidence was that in 2000, she identified rental space on LR No 209/1727 which was situated along Haile Selassie Avenue. She then approached the 1st defendant who gave her a letter of offer dated 21/3/2000. She accepted the offer and paid the initial rent together with a security deposit amount of Kshs 90,000. She then took possession and put up a business which comprised of a restaurant, bar, lodgings, butchery, an Mpesa shop, and storage facilities. She continued to pay rent to the 1st defendant's agents, Regent Management Limited, even after the expiry of the initial term of five years and three months. On 13/4/2015, she received a call from the night manager informing her that the 2nd defendant had cordoned the property and asked her employees to vacate the premises. The 2nd defendant and its agents looted and damaged her property in the process of eviction. She was not shown a court order allowing the demolition but was only given the case number which granted the eviction and demolition. The premises was demolished with some of her belongings still inside. Upon perusal of the court documents, she discovered that the 2nd defendant had purchased the premises from the 1st defendant. The 2nd defendant had sued five individuals in Milimani CMCC No 7494 of 2013 and the matter was settled through consent. The tenants sued were not occupying the suit premises. The eviction was unlawful and a breach of the tenancy agreement. She produced a bundle of 18 documents.

8. During cross examination by Mr Nderitu for the 1st defendant, she stated that the original offer letter was signed by Ruth Mwaniki. The document she presented before court was not signed. She did not have a bankers cheque showing payment of Kshs 130,000. She did not have any receipt for the items lost during the demolition. She did not produce an inventory of stock, audited accounts or tax invoices, books of accounts, hire agreement for lockers or a business licence. She sued the 1st defendant because it did not inform her that the property had been sold to the 2nd defendant.

9. During cross examination by Ms Odeo for the 2nd defendant, she stated that the letter of offer related to Plot No 209/1727. The tenancy was to commence on 1/10/1998 but the letter of offer was dated 21/3/2000. There was an error in some of the receipts exhibited in court because they indicated that payments were for Plot No 209/1726 instead of Plot No 209/1727. She was the only tenant in the suit premises. She did not have evidence to prove that she lost property and goods worthy Kshs 4,000,000. She was not present when the demolition was carried out because it was done at night.

10. During re-examination, she stated that she was not party to Milimani CMCC No 7494 /2013. The defendants named in that suit were not tenants in the suit premises.

11. The defendants called three witnesses. Andrew Wachira testified as DW1. He stated that he was the Managing Director of KPCU (the 1st defendant) . He adopted his written statement dated 20/2018 as his sworn evidence in chief. His evidence was that the company was placed in receivership in August 2009. The receivership was lifted briefly for 30 days and was permanently lifted on 4/7/2014. The company elected new representatives to the board. The receiver manager handed over all the assets and records of the company to the new management. Kenya Commercial Bank, the major creditor of the company, was in custody of all the leases issued by the 1st defendant. There was no lease agreement held in favour of the plaintiff by Kenya Commercial Bank. The lease agreement produced by the plaintiff did not exist in the 1st defendant's records. The letter dated 21/3/2000 referenced as KPCU/DGM/164/99 did not match with the company's referencing and filing system. The fact that the offer letter was dated 21/3/2000 and the reference indicated 1999 raises questions. The lease agreement was not signed by the 1st defendant. If indeed there was a lease agreement between the company and the plaintiff, the same expired and therefore, the plaintiff was a tenant at will, paying rent on a month to month basis. The company sold LR No 209/1727 together with other adjacent parcels; LR No 209/1728, 209/8212 and 209/7228 to the 2nd defendant for a consideration of Kshs 120,000,000. The 2nd defendant however paid Kshs 112,000,000 leaving a balance of Kshs 8,000,000 which had not been paid. It was one of the terms of the agreement that the property was being sold with vacant possession after payment of the purchase price in full. The 2nd defendant had never objected to the 1st defendant collecting rent from the plaintiff because vacant possession had not been granted. The 2nd defendant did not inform the 1st defendant about the suit filed against the tenants in the premises. The 1st defendant was not aware of the eviction notice issued against the plaintiff and other tenants. He produced a bundle of 7 documents.

12. During cross examination by counsel for the 2nd defendant, he stated that he was not working for the 1st defendant when the property was sold. His evidence was based on the records held by the 1st defendant. There was no lease agreement or tenancy agreement between the plaintiff and the company. What existed was a tenancy at will agreement. The property was sold in October 2007 and the transfer was completed in December 2007. The 1st defendant was not in possession of the suit property when the demolition took place. He was not aware that the property was charged to National Bank. The 1st defendant did not give the 2nd defendant vacant possession because the full purchase price had not been paid. The property was registered in the 2nd defendant's name at the time of the eviction.

13. During cross examination by Ms Kimere for the plaintiff, he stated that the company continued receiving rent after sale of the suit property to the 2nd defendant because the full purchase price had not been paid. He was not aware of the proceedings in Nairobi CMCC 7494/2013 which led to the eviction of the plaintiff.

14. In re-examination, he stated that the company was not a party in Nairobi CMCC No 7494/2013. The tenancy at will was between the company and Nyota Tano Limited and not the plaintiff. The company was not liable for the allegations raised by the plaintiff in the plaint.

15. Peter Mwangi Gathogo testified as DW2. He stated that he was a licensed auctioneer trading as Daystar Auctioneers. He adopted his written statement dated 17/2/2017 as his sworn evidence-in-chief. He stated that on 12/8/2014, he received instructions from the firm of Macharia Waiganjo to carry out an eviction as per the order issued in **Milimani CMCC No 7494/2013, Eldoret Express Ltd vs David**

Muhugu and others. He personally served all the defendants with the eviction order. Due process of carrying out an eviction was followed. They requested the County Commander for hire of police inspector and police constables and paid Ksh 51,000. The eviction was carried out on 13/4/2015. The tenants moved out peacefully and carried their property. Some insisted on carrying away doors and window grills which they had installed. The eviction process was successful but on 14/4/2015, he received a call from the OCPD Central informing him that there were idlers and vagabonds in the premises threatening to steal metal bars. The OCS - Kamukunji, Assistant County Commissioner - Starehe, Officials from the Ministry of Interior and Officials from the Disaster Preparedness Teams and Boards ordered that the building be demolished because of security reasons. The 2nd defendant was informed of the intended demolition and the building was brought down after consulting with the auctioneering company. He produced a bundle of 7 documents.

16. During cross examination by Mr Kariuki for the 1st defendant, he stated that the instructing client was the 2nd defendant and not the 1st defendant. During cross examination by Ms Kimeere for the plaintiff, he stated that he served everyone operating business in the premises. He was not aware of individual businesses in the premises. The eviction process started at 7:15 am. Margaret Kinaro Kimere was not on the list of the tenants to be evicted.

17. During re-examination by Mr Odeo for the 2nd defendant, he stated that his mandate was only to evict the tenants. He was not aware of what transpired at 4:00 am. He evicted 5 tenants.

18. Joseph Nganga Thungu testified as DW3. He stated that he was a director of Eldoret Express Company Ltd, the 2nd defendant. He adopted his written statement dated 10/2/2017 as his sworn evidence-in-chief. He stated that the 1st defendant entered into a sale agreement with the 2nd defendant on 30/10/2007 for the purchase of LR No 209/7228, 1726, 1727 and 8412. There were 5 tenants (David Mahugu, Joseph Kamunyu Mburu, Francis Kimani Mwangi, Simon Irungu and Caroline Kangara) in occupation of the suit premises. It was agreed that the tenants were to remain in occupation and continue paying rent of Kshs 20,000. On 14/9/2010, the tenants were served with notices to pay rent to the 2nd defendant's agents but they declined to do so. The 2nd defendant filed a suit against them; Milimani CMCC No 7494/13. The Magistrate Court ordered the eviction of the defendants from the suit premises. A notice and the court order were served on all the tenants. They engaged the services of Daystar Auctioneers who lawfully carried out the eviction order. There was no one in occupation at the time of the demolition. The plaintiff was a stranger to the 2nd defendant. There was no report of loss of any valuables. There was no tenancy relationship between the 2nd defendant and the plaintiff. The receipts produced by the plaintiff related to Wakulima House which is different from the suit premises. The company did not receive rent from the plaintiff.

19. During cross examination by Mr Ngugi for the 1st defendant, he stated that the 1st defendant was not involved in the eviction process. During cross examination by Ms Kimere for the plaintiff, he stated that the 2nd defendant bought the suit property from the 1st defendant at Kshs 120 Million and paid 24 Million. The balance was paid by National Bank of Kenya. He was not aware of any outstanding balance or that the plaintiff was paying rent to the 1st defendant. There were several businesses in the premises including an Mpesa shop, a cafeteria, and a butchery. The leases relating to the tenants were not registered. None of the tenants sued the 2nd defendant.

20. During re-examination, he stated that there was no dispute between the two defendants.

Submissions

21. The plaintiff filed written submissions on 28/6/2019 through the firm of Gichuki Kimere & Company Advocates. Ms Kimere, counsel for the plaintiff framed the following issues for determination by the court: (i) whether the plaintiff was a lawful tenant to the 1st defendant; (ii) whether the 1st defendant was in breach of the tenancy agreement; (iii) was the eviction unlawful?; (iv) is the plaintiff entitled to damages from the defendant?; and (v) is the plaintiff entitled to exemplary damages.

22. Ms Kimere submitted that the 1st defendant had admitted the tenancy of the plaintiff. She added that the eviction by the 2nd defendant was illegal because the plaintiff was a tenant to the 1st defendant and there was no court order authorizing eviction of the plaintiff. It was further submitted that the plaintiff had not given up possession of the premises. Counsel relied on the case of **Teresia Irungu v Jackton Ocharo & 2 others [2013]eKLR** where the court held that where a tenant does not give up possession or agrees to leave the premises, the landlord ought to obtain a court order for possession of the premises. It was further submitted that the demolition of the premises was illegal. Reliance was placed on the case of **Azim Sameja t/a Business 2000 v Lakhamsi Virpal Shah&5 others [2016] eKLR** where the court held that destruction of the premises with bulldozers constituted an illegal eviction. It was argued that the plaintiff was entitled to general damages because the 2nd defendant unlawfully evicted her and in the process of eviction, her property was stolen and/or destroyed. Reliance was placed on the case of **Titus Gatitu v Municipal Council of Eldoret [2015] eKLR** where the court awarded the plaintiff general damages of Ksh 500,000 for trespass in a demolition process. The plaintiff's counsel added that the plaintiff should be awarded exemplary damages. Counsel submitted that the court in the case of **Rookes v Barnard (1964) I ALL** held that exemplary damages may be awarded in two instances: first where there is oppressive, arbitrary or unconstitutional action by the servants of the defendant and secondly, where the defendant's conduct is calculated to procure him some benefits, not necessarily financial at the expense of the plaintiff. Lastly, it was submitted that the plaintiff was entitled to over Ksh 3 million for goodwill.

23. The 1st defendant filed written submissions on 19/7/2019 through the firm of Mbiriri Ngugi & Company Advocates. The 1st defendant framed the following four questions to be determined by this court: (i) whether the plaintiff had *locus standi* (ii) whether the plaintiff had a cause of action against the 1st defendant; (iii) whether the plaintiff is entitled to special general and exemplary damages and (iv) who should bear costs of this suit.

24. It was submitted that the plaintiff did not have the *locus standi* to institute this suit. It was argued that a person or directors of a company and the company are different entities, and the company ought to sue in its own name. It was argued that what the plaintiff should have done was to seek leave before instituting this suit in person. Reliance was placed on the case of **Amin Akberali Manji & 2 others v Altaf Abdulrasul Dadani & Another [2015] eKLR**. Counsel further submitted that the plaintiff did not have a cause of action against the 1st defendant because the plaintiff was a tenant at will. It was further argued that none of the allegations against the 1st defendant had been proved. It was submitted that the plaintiff had not met the requirements of Section 107 of the Evidence Act. On the issue of special damages, it was submitted that the plaintiff did not prove how she arrived at a figure of Kshs 8,125,000 as general damages. Counsel relied on the case of **Banque Indosuez v DJ Lowe & Company Limited [2006] eKLR** where the court held that special damages must be specifically

pleaded and proved.

25. The 2nd defendant filed written submissions on 30/10/2019 through the firm of Iyapa Odeo & Company Advocates. The following five issues were framed for determination: (i) whether the eviction of the 2nd defendant was unlawful; (ii) whether the 2nd defendant had a right to carry out the eviction; (iii) whether the plaintiff was a tenant at will; (iv) whether the plaintiff was a tenant of the 2nd defendant paying rent to the 2nd defendant; and (v) whether the plaintiff was entitled to orders sought.

26. Counsel submitted that the eviction was done legally in accordance with Section 23 of the Auctioneers Act, No 5 of 1996 and Rule 6 of the Auctioneers (Practice) Rules of 2009. It was further submitted that the 2nd defendant had a right to carry out the eviction because it was the legal owner of the suit property and was protected under Sections 24 and 26 of the Land Registration Act. It was further submitted that the plaintiff was a tenant at will and if there existed a tenant/landlord relationship with the 1st defendant, the same was terminated when the 2nd defendant bought the suit premises. It was argued that the plaintiff had never paid rent to the 2nd defendant. Counsel for the 2nd defendant further submitted that the plaintiff was not entitled to special damages of Ksh 8,125,000 because the same had not been proved.

Analysis and Determination

27. I have considered the parties' respective pleadings, evidence and submissions. I have also considered the relevant legal framework, legal principles and jurisprudence. Parties did not agree on a common statement of issues. They however individually itemized what they considered to be the key issues falling for determination in this suit. Having taken into account those issues as set in the parties' submissions, together with the parties' pleadings and evidence, the following are the five key issues emerging for determination in this suit; (i) Whether the 1st defendant acted carelessly, unlawfully and in breach of the tenancy between it and the plaintiff; (ii) Whether the eviction carried out by the 2nd defendant against the plaintiff was unlawful; (iii) Whether both or either of the defendants is liable to the plaintiff; (iv) Whether the plaintiff is entitled to the reliefs sought and if so what should be the quantum; and (v) Who should bear costs of this suit? I will make brief pronouncements on the five issues sequentially in the above order.

28. The first issue is whether the 1st defendant acted carelessly, unlawfully and in breach of the tenancy between it and the plaintiff. The plaintiff did not produce any executed lease or tenancy agreement it had with the 1st defendant. The first defendant does not however contest the fact that there was a tenancy relationship between it from 2000 to the time the plaintiff was evicted. Section 57(2) of the Land Act contemplates a scenario where a land owner permits the exclusive occupier of the land by any person at a rent. Section 57 (2) provides thus:

57. (2) If the owner of land permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, the occupation shall be deemed to constitute a periodic tenancy.

29. What therefore emerges from the relationship between the plaintiff and the 1st defendant is that of periodic tenancy. Section 57(4) provides that a periodic tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

30. As a tenant lawfully paying rent to the 1st defendant, the plaintiff was entitled to quiet possession of the suit property. What, however, emerges from the evidence presented to the court is that the 1st defendant entered into a sale agreement with the 2nd defendant in 2007 and transferred the suit property to the 2nd defendant. The 1st defendant did not, however, bother to inform the plaintiff about the sale and transfer of the suit property. The 1st defendant withheld the information for a period running from 2007 to 2015 when the 1st defendant forcefully evicted the plaintiff from the suit property. Throughout that period, the 1st defendant continued to receive rent from the plaintiff. In my view, the 1st defendant owed the plaintiff a duty to inform her that it had sold the suit property to the 2nd defendant. The 1st defendant therefore acted unlawfully and in breach of the existing periodic tenancy by withholding this material information from the plaintiff. I am therefore in agreement with the plaintiff that the 1st defendant acted carelessly, unlawfully and in breach of the tenancy between it and the plaintiff to the extent that it failed to notify the plaintiff on a material change relating to the tenancy property. The material change related to transfer and ownership of the tenancy property. The court accordingly finds that the 1st defendant acted carelessly, unlawfully and in breach of the periodic tenancy which existed between it and the plaintiff.

31. The 2nd issue is whether the eviction carried out by the 2nd defendant against the plaintiff was unlawful. The 2nd defendant contends that the eviction was carried out pursuant to an order issued in **Nairobi CMCC No 7494 of 2013**. The said order was a consent order entered into by the 2nd defendant herein on one part and some unknown five persons on the other part. The plaintiff herein was not a party to the suit and was not one of the parties to the consent. It defies logic that the 2nd defendant and the enforcing auctioneer maintain that their eviction of the plaintiff who was not party to the suit and to the consent order was proper execution of the order. To the contrary, that was a blatant illegality, a criminal activity on part of the 2nd defendant and the auctioneer. The order was not directed at the plaintiff and should never have been enforced against the plaintiff.

32. The 2nd defendant as the 1st defendant's successor in title was bound by the existing periodic tenancy and could only terminate it or evict the plaintiff in accordance with the law. There is no evidence of any notice of termination of tenancy or any eviction order obtained against the plaintiff. My finding on the second issue therefore is that the eviction carried out by the 2nd defendant against the plaintiff was unlawful.

33. Having found that both defendants acted unlawfully towards the plaintiff, it follows that both of them are liable to the plaintiff. However, the gravity of their actions and omissions were not the same. The party who carried out the illegal eviction, in my view, committed a greater injury than the party who failed to notify the plaintiff about the material change to the periodic tenancy. I will therefore apportion liability at the ratio of one third against the 1st defendant and two thirds against the 2nd defendant.

34. The fourth issue is whether the plaintiff is entitled to the reliefs sought in the plaint and if so, what should be the quantum. The plaintiff sought the following reliefs: (i) special damages of Kshs 8,125,000 with interest from the date of filing suit.; (ii) general damages; (ii) costs; and (iv) any other order the court may deem fit. I will make sequential comments on the reliefs in the above order.

35. The first prayer relates to special damages and interest thereon. It is settled law that a claim for special damages must be specifically

pleaded and proved. The Court of Appeal emphasized this legal principle in **BANQUE INDOSUEZ V D J LOWE & COMPANY LIMITED [2006]eKLR** as follows:

“Though special damages were specifically pleaded or claimed, they were not proved at all. It is simply not enough for the respondent to pluck figures from the air and throw them in the face of the Court and expect them to be awarded. It is trite that special damages must not only be claimed specifically but also proved strictly for they are not direct natural or probable consequences of the act complained of and may not be inferred from the act...”

36. I have painstakingly gone through the documentary evidence presented to the court by the plaintiff. The evidence essentially relates to the tenancy. It mostly consists of rent receipts. The receipts issued by the 1st defendant bear the name **Nyota Tano** while those issued by Regeant Management Limited bear the name **Nyota Tano Limited**. The plaintiff’s claim of special damages was particularized in paragraph 14 as follows:

- a. Loss of Deposit on rent Kshs 90,000
- b. Cost of equipment and stock Kshs 4,814,000
- c. Loss of goodwill at Kshs 1,500,000
- d. Loss on income of Kshs 1,721,000 per month

37. The plaintiff exhibited receipts relating to the deposit of Kshs 90,000 which she paid to the 1st defendant. She did not, however, exhibit any other evidential material in support of the other limbs of the claim for special damages. Relevant evidence such as audited accounts for the preceding year, tax returns and payments for the preceding year, and bank statements for the relevant period, were all omitted. While the court is alive to the fact that the illegal eviction coupled with the demolition could have led to loss of some documents, the court has no doubt that copies of the documents would be with the plaintiff’s auditors, the Kenya Revenue Authority, and the plaintiff’s bankers. It is therefore untenable for the plaintiff to present unbacked claims and expect the court to make special damages awards in respect of the unsupported claims. Consequently, save for the special damages claim relating to deposit of Kshs 90,000, I decline to award the other limbs of the special damages claim.

38. The second prayer relates to general damages. General damages are compensatory damages which the law presumes follow as a result of any wrong or harm done to a claimant. Unlike special damages, general damages need not be specifically proved. Once the claimant demonstrates that he suffered harm as a result of the defendant’s conduct, the court undertakes an assessment and makes an award in exercise of its discretionary jurisdiction. As outlined in the preceding paragraphs, the plaintiff has proved carelessness, unlawfulness and breach of periodic tenancy by the 1st defendant. The plaintiff has also proved that the eviction carried out by the 2nd defendant was unlawful. The conduct of the two defendants had the effect of bringing the plaintiff’s business to a halt.

39. The plaintiff did not propose the figure she considers to be appropriate in general damages. The position of both defendants is that the plaintiff is not entitled to any general damages. They did not propose any figure. I do not agree with the view taken by the defendants. There were wrongs committed by the defendants against the plaintiff. The net effect of those wrongs is that the plaintiff’s business came to an abrupt halt. I will therefore award the plaintiff general damages of Kshs 1,500,00 to be borne by the two defendants in the ratio of one third to two thirds.

40. Before I summarize the disposal orders, I will make brief comments on some issues which were raised by the parties. The first issue was raised by the 1st defendant and relates to the *locus standi* of the plaintiff. The 1st defendant contended that the suit herein should have been brought by Nyota Tano Limited and not the plaintiff. Firstly, this issue was not raised in the pleadings. It was similarly not raised during trial. The 1st defendant only raised it in its written submissions. I decided not to focus on it as a key issue because it was not pleaded. Secondly, the 1st defendant had expressly averred in its pleadings that the plaintiff, Margaret Kinaro Kimere, was its tenant. Thirdly, a number of the rental receipts issued by the 1st defendant bears the name Nyota Tano as opposed to Nyota Tano Limited.

41. The second issue relates to exemplary damages and goodwill. The plaintiff did not pray for exemplary damages and/or goodwill. The plea for exemplary damages and good will were raised in the plaintiff’s written submissions. I have not awarded them these pleas because the plaintiff did not pray for them.

Disposal Orders

42. In light of the above findings, I enter judgment for the plaintiff against the defendants in the following terms:

- a. **Deposit in the sum of Kshs 90,000 to be paid by the 1st defendant.**
- b. **General damages of Kshs 1,500,000 to be paid by the two defendants as follows:**
 - i. **1st defendant to pay Kshs 500,000**
 - ii. **2nd defendant to pay Kshs 1,000,000**
- c. **Interest on (a) and (b) at court rate from the date of filing suit and the date of judgment, respectively.**

d. Costs of the suit to be borne in the ratio of :

i. One third by the 1st defendant, and

ii. Two thirds by the 2nd defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF FEBRUARY 2020.

B M EBOSO

JUDGE

In the presence of:-

Ms Kimere for the plaintiff

Mr Nderitu for the defendant

June Nafula - Court Clerk