



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
CIVIL CASE NO. 1130 OF 1996

LUCY WAIRIMU MWAURA..... PLAINTIFF

VERSUS

ASWINCHAND HIRJI SHAH.....1ST DEFENDANT

NAVICHAND HIRJI SHAH.....2ND DEFENDANT

MUKESH KUMAR HIRJI SHAH....3RD DEFENDANT

ABDUL JANMOHAMED.....4TH DEFENDANT

J U D G M E N T

PRELIMINARY

1. The Defendants, represented by the law firm Wagara Koyyoko & Co. Advocates, were served, through their said Advocates with a hearing notice of this case on 5th October 2018. The case came before Court for hearing on 21st November 2018. The Defendants and their Advocates did not attend the hearing. The Plaintiff, who was present, proceeded with her case.

PLAINTIFF'S CASE

2. The Plaintiff's case was that she was, at the material time a tenant of the Defendants, at property known as L.R. No. 1870/IV/131 Flat No. 7 Block C Valley View Flats Westlands, Nairobi (subject property). The Plaintiff stated that in April 1992 the Defendants agreed orally and partly in writing to sell the subject property to her. She paid a deposit of Ksh 168,000.

3. However instead of proceeding with the sale, the Plaintiff stated, that the Defendants began to harass her. That the Defendants on or about 12th December 1995 sent their agent who distressed the Plaintiff's house-hold goods for rent arrears of Ksh 56,000. The value of her property that were attached was Ksh 76,000.

4. On 21st March 1996 the Defendants again attached the Plaintiff's property was valued at Ksh 65,000.

5. On 26th April 1996 the Defendants distress for rent and the Plaintiff's property valued at Ksh 388,400/=.

6. The Plaintiff's evidence was that the said distress was intended to harass her to abandon her right of purchase of the subject property.

7. The Defendant thereafter took possession of the subject property

ANALYSIS AND DETERMINATION

8. The Plaintiff's prayers in the Plaint are for an order compelling the Defendant to sell the subject property to her; an order for Defendant to release her property; an order for damages for illegal distress; an order for special damages of Ksh 1.5 Million; and an order mesne profit for Ksh 60,000 per month from November 1996 until possession is surrendered by the Defendants.

9. The Plaintiff, on her prayer to enforce the sale of the subject property to her, relies on correspondence of the Defendants where they committed themselves to sell the subject property to her.

10. Correspondence on their own however do not meet the legal threshold of Section 3 (a) and (b) of the Law of Contract Act. That section provides:

“No suit shall be brought upon a contract for the disposition of an interest in land unless –

a. The contract upon which the suit is founded-

(i) Is in writing

(ii) Is signed by all the parties thereto; and

b. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.

11. The Plaintiff did not provide a contract in writing, signed by all the parties and where the signatures are attested.

12. It follows that the law does not permit enforcement of the agreement presented by the Plaintiff in this case. She is however entitled to the refund of the deposit she paid to the Defendants of Ksh 168,000.

13. The Plaintiff however did prove, on a balance of probability that house-hold items were unlawfully attached by the Defendant, not once but three times. She is therefore entitled to be compensated for the loss she incurred in that regard.

14. Since the Plaintiff has proved that the distress was illegal then as provided under Section 7 of the Distress for Rent Act, Cap 293, she will be entitled to recover three times the value of the goods distrained.

15. In addition, because of the inconvenience the Plaintiff suffered, due to wrongful distress, she will be entitled to general damages which I assess at Ksh 300,000.

16. The Plaintiff having proved substantial prayers in her case is entitled to costs of the suit.

17. There shall, therefore be judgment for the Plaintiff against all the Defendants as follows:

a. Special damages which multiplied by three is Kshs. 1,165,200;

b. General damages of Kshs. 300,000;

c. Refund of the deposit Kshs. 168,000;

d. Costs of the suit;

e. Interest on (a) (b) and (c) at Court rate from the date of filing suit until payment in full.

DATED, SIGNED and DELIVERED at NAIROBI this 5th day of MARCH, 2019.

MARY KASANGO

JUDGE

Judgment read and delivered in open Court in the presence of:

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE 1ST DEFENDANT

..... FOR THE 2ND DEFENDANT

..... FOR THE 3RD DEFENDANT

..... FOR THE 4TH DEFENDANT