



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 267 OF 2018

THE BOARD OF MANAGEMENT OF CHRISTIAN INDUSTRIAL

TRAINING CENTRE CHURCH COMMISSIONERS FOR KENYA

(TRUSTEES OF THE ANGLICAN CHURCH OF KENYA).....PLAINTIFFS

VERSUS

SILAS BUKO TUNU.....DEFENDANT

JUDGMENT

(Suit for vacant possession of premises and accumulated rent and utility bills; defendant having been an employee of the plaintiff but his services being terminated; while in employment defendant having been availed staff quarters to live in; plaintiff now wishing to have back the staff quarter allocated to the defendant since defendant is no longer its employee; defendant failing to vacate; no basis for the defendant to continue living in the staff quarters of the plaintiff as he is no longer its employee; adequate notice having been given to him; defendant failing to appear at the hearing to justify his continued stay; judgment given in favour of the plaintiff; order given for vacant possession and payment of accumulated rent and utility bills and costs of the suit)

1. This suit was commenced through a plaint which was file on 9 November 2018. The plaintiff has pleaded to be the owner of the land parcel Mombasa/Block X/435 where it has erected a training institute known as the Christian Industrial Training Centre and other related facilities. On the land are staff houses developed by the plaintiff. The plaintiff has pleaded that between 15 September 1993 and March 2012, the defendant was its employee and was offered housing in the premises. At the end of 2012, it is averred that the defendant took up employment with the Government and ceased to be an employee of the plaintiff. The plaintiff then gave the defendant notice to vacate the house but the defendant has refused to do so. It is averred that the defendant now owes accumulated rent of Kshs. 635,000/= which continues to accrue. In the suit, the plaintiff has asked for orders to have the defendant vacate the house within its premises, rent of Kshs. 635,000/= and any other rent and utility bills that will be outstanding when he vacates or is evicted.

2. The defendant filed a statement of defence where he denied that he has taken up employment with the Government and has ceased being an employee of the plaintiff. He however pleaded being absorbed into the civil service and has stated that there were outstanding issues regarding salary and house allowance which remain unresolved to date. He has pleaded that the plaintiff's management informed the defendant that he should remain in the suit premises until these issues are resolved. He asked that the suit be dismissed.

3. At the hearing of the suit, the defendant and his counsel did not appear. The plaintiff called one witness, Mr. James Mburu Kimani, the manager of the plaintiff's institution. 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 land; a letter dated 5 March 2012 through which the defendant was offered employment with the Ministry of Youth and Sports; a letter dated 4 October 2016 through which the plaintiff asked the defendant to vacate its house by end of December 2016; another letter dated 31 July 2017 where the defendant was given more time up to December 2017 to vacate; a rent schedule; and a demand notice. Clearly these were not complied with hence this suit.

4. I have seen that in its letters the plaintiff informed the defendant that the plaintiff needs the house for its own use. I do not see how the defendant can insist on living in the house in issue since he is no longer an employee of the plaintiff. He can only continue living in it if the plaintiff allows him to do so but the plaintiff needs the premises and has given him notice to vacate. His tenancy over the suit premises has been terminated, and that being the case, the defendant is no more than a trespasser in the plaintiff's premises. He needs to give vacant possession as requested. I am aware that in his defence, he stated that there are some outstanding issues, but he did not appear in court to state what these issues are, and his defence remains unsubstantiated. The plaintiff therefore deserves the order for vacant possession and if the defendant fails to vacate the plaintiff is at liberty to forcefully evict him.

5. There is the claim for rent of Kshs. 635,000/=. What I have seen is a rent schedule showing that the plaintiff owed Kshs. 562,500/= as at December 2017. The amount of rent from what I can see in the schedule is Kshs. 13,500/= per month. From January 2018 to February 2020 would be 26 months thus the sum of Kshs. 351,000/=. If you add this to the sum of Kshs. 562,500/= you get the sum of Kshs. 913,500/=. This is the amount owed as rent as at the time of this judgment. I cannot tell what utility bills are outstanding, but the defendant needs to clear the same, and if the plaintiff has to pay, then the plaintiff is entitled to a refund from the defendant.

6. From the foregoing I enter judgment for the plaintiff. I make the order that the defendant does vacate the suit premises within 30 days of today. He must also pay the sum of Kshs. 913,500/= as accumulated rent and any other amount in rent, depending on how long he will take before he vacates or is evicted, at the rate of Kshs. 13,500/= per month. The defendant must pay all utility bills, or if the plaintiff pays the same, he must refund the money so paid to the plaintiff. All amounts above to attract interest at court rates from the date of this judgment. On costs, the plaintiff will have the costs of this suit.

7. Judgment accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 11th day of March, 2020.

MUNYAO SILA

JUDGE

IN THE PRESENCE OF:

Mr Oluga for the plaintiff.

Ms Oyier holding brief for Mr Mkan for the defendant.

Court Assistant; David Koitamet.