



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 130 OF 2013

ECONOMIC CO-OPERATIVE SOCIETY LTD.....PLAINTIFF

VERSUS

MAJEED M. JASHO.....DEFENDANT

JUDGMENT

By a plaint dated 21st March 2013 (fast track) and filed in court on 22nd April 2013 the plaintiff Economic Co-operative society ltd sued Majeed M. Jasho trading as “ LAS AIR FLIGHT “ seeking orders for

- a. Vacant possession of the tenanted premises situated on plot No. LR 209/774 on Monrovia Street in the City County or Nairobi, in accordance with the Landlord’s Notice dated 7th January 2010.
- b. An order that the plaintiff may break open the premises in order to get access to the said premises.
- c. Shs 93,250 arrears of rent as aforesaid.
- d. Kshs 600,555 mesne profits at the rate of shs 19,196 per month from 31st January 2013 until the defendant delivers vacant possession of the said premises.
- e. Costs of this action.
- f. Interest on (b), (c) and (d) above.
- g. Any other further relief which this Honourable court may deem just.

The above prayers are grounded on the facts that the plaintiff is the lawful and registered owner of all that parcel of land known as LR NO.209/774 situate on Monrovia Street in the City of Nairobi together with all the buildings and improvements erected and built thereon.

And that the defendant was a monthly tenant of the plaintiff in respect of certain shop premises on the described premises, situated on the ground floor of the said property at an agrees monthly rent of shs 8,500 per month or such other rate as may vary from time to time to reflect the prevailing market rates.

That on or about the 7th day of January 2010, the plaintiff served upon the defendant a Landlord’s notice to terminate the said tenancy pursuant to the landlord and tenant (shops, hotels and catering establishments) Act (cap 301) on grounds that the defendant had defaulted in rent payment for a period exceeding 2 months after such rent had become due and payable to the plaintiff in respect of the said premises.

Further, that in breach of the aforesaid notice to terminate tenancy, the defendant failed to notify the

plaintiff in writing within 1 month after receipt of the said notice whether or not the defendant agreed to comply with the said notice from 31st March 2010 and has in further breach, continued after the said date to occupy the demised premises as a trespasser thereat.

The defendant despite being served with summons to enter appearance neither entered appearance nor filed defence and on 25th June 2013 the court entered interlocutory judgment in favour of the plaintiff.

The suit was thereafter set down for formal proof on 30th October 2014 and I had the occasion to hear the plaintiffs who testified through Mr Sunil Salim Chagani the administrative manager of the plaintiff. He relied on his statement dated 21st March 2013 and filed in court on 22nd April 2013 which statement was adopted as his evidence in chief. He then went further to highlight the salient features of his statement, which was in essence a replica of the pleadings as filed in the plaint.

Mr Chagani testified on oath and stated that the plaintiff leased to the defendant the suit premises in 2004 at a monthly rent of shs 8500 upto June 2009 and that the said rent was only revised after re evaluation of the property and he was charged shs 15,000/- from July 2009 June 2010, with a 10% yearly increment from July 2010-June 2011; July 2011-June 2012 and July 2012 –June 2013 by which time it had reached shs 19,965. By June 2014, the rent was 21,962 which rent the defendant has adamantly refused to settle despite the plaintiff sending him invoices since March 2010. That on 7th January 2010 the plaintiff was served with a notice to terminate tenancy pursuant to the provisions of Section 4(2) of the Landlord /Tenant Act (cap 301) for failure to pay rent but that the defendant has never bothered to respond or object to the said notice and continues to occupy the said premises without bothering to remit rent or rent arrears which has now accumulated.

The plaintiff produced documentary evidence to show that in 2012 the defendant approached the plaintiff seeking to sign a lease agreement and settle the arrears and the plaintiff was willing but again he defaulted. He testified that the outstanding rent to date is shs 1,145,022 from the defendant since 2010 as accumulated and as tabulated in the statement of accounts P exhibit 12.

The plaintiff also claimed for 600,558 being mesne profits as the defendant is still in occupation of the premises by force despite the tenancy terminating following the notice of 7th January 2010. He prayed for an order to allow the plaintiff break into the said premises and to forcefully evict the defendant who has remained non responsive to amiable mode of vacating the premises as the plaintiff is losing business.

Several correspondences produced also showed that the defendant had always been given an opportunity to either leave or pay rent or both but he is adamant.

The plaintiff exhibited notice to terminate tenancy, customer balance summaries demand notice before action, letter to Business Premises Rent Tribunal, letter from Business Premises Rent Tribunal, notices to Majeed, defendant emails in 2012.

The plaintiff closed its evidence with only Mr Chagani testifying and producing documentary evidence to prove their claim against the defendant.

In his written submissions filed in court on 17th November 2014, the plaintiffs advocate Mr Saenyi , for the firm of Mohamed & Sam Nakay advocate reiterated the pleadings and testimony by the plaintiff and prayed for judgment as sought in the said plaint and testimony.

The only issue for determination is whether the plaintiff has proved its case against the defendant on a balance of probabilities.

I have carefully considered the plaintiffs claim as pleaded, supported by the testimony of Mr Sunil Chagani and the documentary evidence produced in support of the claim. I am satisfied that on a balance

of probabilities, the plaintiff has proved his claim against the defendant and therefore merits the orders sought for the following reasons:

- i. The defendant's tenancy with the plaintiff was never disputed.
- ii. The termination of the tenancy by way of notice dated 7th January 2010 was never objected to and the same was procedural and lawful, in accordance with Section 4 (2) of Cap 301 Laws of Kenya.
- iii. The defendant has continued to occupy the premises belonging to the plaintiff as if he was a tenant, yet without payment of any rent and against the plaintiff's will.
- iv. The defendant has refused to amiably pay rent arrears and or vacate the premises and/gave vacant possession to the defendant Landlord.
- v. The plaintiff has demonstrated that they are owed rent arrears as per the statement of 22nd October 2014 produced in evidence.

Accordingly, I enter final judgment in favour of the plaintiff against the defendant in the following terms:

1. That the defendant do give vacant possession to the plaintiff premises situated on plot No. LR 2009/774 on Monrovia Street, Nairobi City County, immediately upon service of certified copy of this judgment and decree upon them.
2. That in default of complying with order No (1) above, the plaintiff do seek the assistance of a qualified court bailiff to break the locks to the said premises and gain access and to forcefully but in a dignified and orderly manner evict the defendant from the said premises.
3. That the defendant do pay to the plaintiff all rent arrears accrued from 2010 to 30th October 2014 totaling ksh 1,145,022 inclusive of mesne profits.
4. The plaintiff shall have interest on the sum of kshs 1,145,022 accruing thereon at court rates from the date of filing of suit herein until payment in full.
5. The plaintiff shall have costs of this suit paid by the defendant.

Dated, signed and delivered at Nairobi this 12th day of May 2015.

R.E. ABURILI

JUDGE

12.5.2015

Coram R.E. Aburili J

C.C. Kavata

Mr Saenyi for the plaintiff

No appearance for the defendant

Court - Judgment read and pronounced in open court as scheduled.

R.E. ABURILI

JUDGE

12.5.2015