



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 636 of 2009

DAVID MUHANGI KUNG’U..... PLAINTIFF

VERSUS

1. HON ATTORNEY-GENERAL

**2. FRANCIS KIMEMIA - PS OFFICE OF THE
PRESIDENT AND IN-CHARGE**

PROVINCIAL ADMINISTRATION

3. J G MUIRURI, CHIEF - MUTU-INI LOCATION, DAGORETTIDEFENDANTS

J U D G M E N T

1. The Plaintiff, DAVID MUHANGI KUNG’U, has sued the Attorney-General, the Permanent Secretary, Office of the President, one FRANCIS KIMEMIA, and the Chief of Mutu-ini Location, Dagoretti Division, one J.G. MUIRURI. He was acting in person.
2. He pleads as follows in his **amended plaint dated 5th December 2010** and filed in court on 4th January 2011. He was a tenant in premises known as **Plot No. 310 (Heshima Bar Building), Kingo Road (Mutu-ini), Dagoretti Market** from January 2008 by a verbal agreement between him and one JOSEPH MUIGUA NELSON, the then manager of Heshima Bar Building. He was paying a monthly rent of KShs 1,000/00 in advance every quarter. He carried on therein a charcoal business (including “charcoal factory, stores, processing and packaging, and transport) under the name DAMUKU ENTERPRISES AND FACTORY which was duly registered.
3. The Plaintiff has further pleaded that the said Joseph Muigua Nelson never issued him with receipts for rent payments, and that when he asked for such receipts, he was threatened with eviction from the premises. He therefore lodged a complaint with the **Business Premises Rent Tribunal (the Tribunal)** which ordered on 28th November 2008 that he should not be evicted.
4. It is the Plaintiff’s further case that despite the said order of the Tribunal, the 3rd Defendant in his official capacity on 9th and 10th February 2009 locked up the Plaintiff’s premises and on 14th March 2009 he evicted him and “confiscated” his stock and gave it to somebody else.
5. Finally, it is the Plaintiff’s case, as pleaded, that as a result of the 3rd Defendant’s illegal action he has suffered irreparable loss and claims damages by way of compensation. He claims KShs 3,985,000,000/00 against the Defendants jointly and severally to cover –

(i) special damages;

- (ii) lost property;
- (iii) loss of income;
- (iv) general damages;
- (v) loss of business; and
- (vi) expenses and costs of the case.

6. The Defendants entered appearance and filed a joint statement of defence dated 15th April 2010 through the Attorney-General. They pleaded, *inter alia*, that the plaint was bad in law in that it does not clearly plead the Plaintiff's case. They further pleaded that the suit was bad in law for failure to give the necessary statutory notice before action as required by law. They gave notice of intention to raise a preliminary objection *in limine* to the suit, but as it happened none was raised and the suit proceeded to hearing.

7. At the hearing the Plaintiff testified but called no other witness. The Defendant's did not lead or call evidence.

8. The Plaintiff testified that he is a wholesale charcoal dealer. In 2008 his business was at Dagoretti Market at Plot No. 310. He supplied charcoal to various market stalls that placed orders for the same.

9. His then landlord, one JOSEPH MUIGUA NELSON, started refusing to give him receipts for rent payments from August 2008. He therefore filed a complaint with the BRT Tribunal vide **Nairobi BPR Tribunal Case NO. 727 of 2008** which ordered on 28th November 2008 that his business should not be interfered with pending hearing and determination of the case. He produced in evidence a copy of the order.

10. Despite service the landlord never attended the Tribunal. Instead he went to the 3rd Defendant who came to the premises on 9th February 2009 and ordered him to vacate for non-payment of rent. The Plaintiff told him he always paid his rent, that there was a pending complaint before the BPR Tribunal, and that in any case he (the 3rd Defendant) did not have an order of any court requiring him to vacate the premises. The 3rd Defendant went away.

11. The Plaintiff further testified that on the following day, 10th February 2009, the 3rd Defendant came back to the premises wearing full uniform and accompanied by armed askaris. He ordered the Plaintiff to vacate the premises and served him with a written notice dated 9th February 2009 to vacate. He produced the same in evidence.

12. The 3rd Defendant then threatened the Plaintiff with violence if he did not vacate the premises. He and his workers feared they might get shot by the askaris and therefore hurriedly vacated the premises. In doing so he left all his charcoal stock then in place for which he had paid KShs 65 million. He had no receipt or other evidence of this payment. He also lost 40,000 empty gunny bags. Apart from his say-so he had no tangible evidence that he had these gunny bags.

13. The Plaintiff also testified that that he had KShs 6.9 million in cash in the premises which he left there as he was unable to take it with him. He had no other evidence that he had this money. He stated that he had not withdrawn it from the bank and that it was "circulation money" from his business. He further testified that he lost 52 tents that he said he used to cover the charcoal. They were worth KShs 3 million. Again he had no other tangible evidence that he had these tents or their value. He also testified that he lost 250 hoes, 250 forked jembes, 250 spades, 25 pangas and 250 files, all used in his business and valued at the total sum of KShs 1,800,000/00. Again he had no tangible evidence of the existence of these items or their value. The Plaintiff put forth these figures as part of his claim.

14. In cross-examination he stated that he had no personal problem with the 3rd Defendant before he evicted him. He said he did not have witnesses because he could not find them as they had been intimidated by the Defendants, having at one time been arrested and assaulted.

15. As already pointed out, the Defendants did not lead or call evidence.

16. I believe the testimony of the Plaintiff that he was illegally evicted from his business premises on 10th February 2009 by his landlord using the 3rd Defendant. That the 3rd Defendant allowed himself to be used, in his official capacity, by one citizen against another in what was purely a civil dispute was reprehensible. It was gross abuse of official power and a gross violation of the Plaintiff's constitutional and legal rights for which he is entitled to general damages. I will award him general damages of KShs 300,000/00 for these violations against the 1st and 3rd Defendants jointly and severally. With regard to the 2nd Defendant he was misjoined and the suit against him is struck out with no order as to costs.

17. As for the monetary claims of the Plaintiff, they are all in the nature of special damages that were neither particularly pleaded nor strictly proved as required by law. The figures thrown at the court had no factual foundation and were wishful and exaggerated in the extreme. They are all dismissed.

18. In summary I will enter judgment for the Plaintiff in the sum of KShs 300,000/00 plus costs of the suit. It is so ordered.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS DAY 3RD OF MAY 2013

H. P. G. WAWERU

JUDGE