



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI
CIVIL CASE NO. 1465 OF 1994

MANSTYLE LIMITED.....PLAINTIFF

VERSUS

KABANSORA LIMITED.....DEFENDANT

RULING

This is an application by Defendant under O.XXXV.r.1 (a) and 2 of Civil Procedure Rules for summary judgment against the plaintiff in favour of the Defendant as prayed in the counter claim. In the counter claim filed on 31.8.94 the Defendant claims that the plaintiff breached a fundamental term of the contract of lease by unlawfully subletting the premises in the suit to various parties so defendant prays for an order that the plaintiff do deliver up vacant possession of the premises to the defendant. Damages for breach of contract and costs. The plaintiff a defence to the counter-claim denying subletting the suit premises and the right the defendant has to terminate.

The application is supported by affidavit sworn on 13.9.94 by Grace Wamunyu Nyachae confirming that plaintiff has no reasonable defence.

The plaintiff ELIZABETH MAINA has countered this in her affidavit dated 8.11.94 saying the business she put up of accommodating business executives looking for temporary working areas and that it is not subletting.

The principle formulated by our courts in relation summary judgment is in the court of appeal decision in GUPTA VERSUS CONTINENTAL BUILDERS LIMITED (1978) KLR 83 - where it says:

“If a defendant is able to raise a prima facie triable issue he is entitled in law to unconditional leave to defend. On the other hand if no prima facie triable issue is put forward to the claim of the plaintiff, it is the duty of the court forthwith to enter summary judgment for it is as much against natural justice to shut out without proper cause a litigant from defending himself as it is to keep a plaintiff out of his dues in a proper case. Prima facie triable issues ought to be allowed to go to trial, just as a shun or bogus defence ought to be rejected presumptorily”.

In this application there are issues of fact relating to whether the plaintiff sublet the suit premises. There is also the issue of law whether this or any other breaches amounted to fundamental breach.

I believe that the defence raises prima facie triable issues that ought to be allowed to proceed to trial.

I accordingly disallow the application and dismiss it with cost to the plaintiff.

Dated at Nairobi this 18th day of January, 1996.

A.I. HAYANGA

JUDGE

18.1.1996

Coram: A.I. Hayanga

Mr. Njenga for plaintiff/respondent

No appearance for respondent

Ruling read on 18.1.1996

A.I. HAYANGA

JUDGE