

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO 254 OF 1991

GURDIAL SINGH & ANOTHER..... APPELLANT

VERSUS

INDIAN SPRAY PAINTERS.....RESPONDENT

JUDGMENT

This appeal arose from a determination delivered on 3.10.91 by the Chairman of the Business Premises Rent Tribunal. The appellant the landlord of the suit premises served a notice of termination of tenancy under s 4(2) of the Landlord and Tenants (Shops, Hotels and Catering Establishment) Act (Cap 301). He wanted the respondent to vacate the premises on which the appellant also runs a business so that the appellant could expand his business and operate thereat for a period of not less than a year. (S 7 (1) (g) – Cap 301). The tenant – respondent did not comply with the notice and instead filed a reference which the tribunal heard and gave the determination now under attack. The tribunal upheld the respondents reasons in the reference for declining to comply with the notice to terminate tenancy.

At the hearing of this appeal which was argued by Mr Ngaira for the appellant while Ms Janmohamed opposed it, on behalf of the respondent, ground No 1 was abandoned.

Beginning with grounds 5 and 6 together this Court is satisfied that the learned Chairman was satisfied that the appellant had been trying since 1970 to get vacant possession of the premises and that this was for appellant's own occupation and not to increase rent. At no point in the determination has the learned Chairman said that the vacation was linked with intended raised rents. Indeed the tribunal was of the view that the attempts by the appellant – landlord to get vacant possession since 1970 was based on various reasons in the various notices they had issued since and that that demonstrated how doubtful the true intention of the appellant was – not because the issue of rent increases arose or that the respondent had enough time to look for alternative premises. None of these attach to the proceedings in the tribunal and they are dismissed.

Backwards in the grounds of appeal, the Court looked next at ground 4 ie that the appellants workshop was so small that it could only be expanded if, the respondent vacated. From the evidence, the learned Chairman did not visit the suit premises. It was not necessary. So if the appellant wished to convince the learned Chairman on this score, it was incumbent on it to present in evidence, plans, maps, sketches, local authority approvals etc to prove that actually more space was needed. The appellant did not do this and the tribunal was not to be expected to do any more than not accept the claim of more space There is no merit in this ground.

Ground 3 – That the tribunal erred and/or failed to consider that the landlord as owners of the suit premises are not required to show actual financial ability to carry out their expansion plans. First, no expansion plans were placed before the tribunal. If they had exhibiting financial ability could only reinforce the appellants' seriousness at carrying out the expansion of the premises. The learned Chairman of the tribunal at no point in the determination made financial ability the focus of upholding the reference. The true basis of throwing out the appellant's claim is that he did not show a serious intention to terminate the tenancy and take over the premises for his own business for a period of one year or more.

This came in the upshot of the determination:

“The tribunal finds that the landlord's intention has not been proved on a balance of probability,

and considering that in the past the landlord has issued notices to the tenant to terminate tenancy for other reasons and also considering that at one time (this) landlord even wanted to sell the suit premises, the tribunal finds that the landlord's intention may not be to use the suit premises."

That is as good an impression as the tribunal made out of all the appellant's case.

By that the appellants' notice was dismissed and the reference allowed. This Court is satisfied that that was a proper determination based on the evidence adduced and the law applicable. By this ground 2 in the appeal is too dismissed.

In sum the whole appeal is dismissed with costs.

Dated and delivered at Nairobi 24th day of 1995

J.W. MWERA

JUDGE