



REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA

CIVIL CASE NO 414 OF 1985

KANTABEN NEMCHAND SHAH PLAINTIFF

VERSUS

APOLLO BWONYA ORODHO

RINAH ORODHO BWONYA

EDWARD CHARLES OHAREDEFENDANTS

JUDGMENT

This is a suit for equitable remedies of injunction and declaration, and, also, for general damages based on an act by the defendants, as landlords or agents of the landlord, in which they took steps to compel the plaintiff to pay a higher rent without legal sanction pursuant to the provisions of the Rent Restrictions Act, Cap 296 Laws of Kenya.

The plaintiff Kantaben Nemchand Shah, a widow of Asian origin, was and is still a contractual monthly tenant of an unfurnished flat on Plot No Mombasa / Block XVII / 837A, Keino Road, Mombasa, owned by Apollo Bwonya Orodho and his wife Rinah Orodho Bwonya, the 1st and 2nd defendants respectively. The rent payable was and still is Kshs 300/- exclusive of light, water and conservancy charges, per month. Edward Charles Ohare, the third defendant was and still is a holder of a power of attorney to generally act in relation to the affairs related to the premises, above, “as fully as myself or my husband could have done”. The donor of the power was Rinah Bwonya, the second defendant. The power was donated on 19th March 1985, but the power of attorney was not registered as required by law.

This action was provoked when the 3rd defendant proceeded to the suit flat on or about 25th April, 1985, and demanded that the plaintiff forthwith agree to pay an increased rent of Kshs 1500/- for the flat, or otherwise vacate the flat by 9 am on the following day or else face ejection. Subsequently the 3rd defendant or his agent allegedly telephoned the plaintiff’s son, Dinesh Nemchand K Shah, and told him to call at Central Police Station, Mombasa, on 1st May, 1985, which he did but was not told why he was required there and by whom. The police had not called him nor were they aware who had required him there.

This action was filed on 16th May, 1985, two days after the plaintiff filed another suit before the Rent Restrictions Tribunal, Mombasa, in effect seeking a declaration that the defendants had no right to claim more rent than was then payable without express authorization by the Tribunal; and, an order that they desist from subjecting her to annoyance or harassment to induce her either to vacate the suit premises or to pay a higher rent. That in effect meant that there was duplication of proceedings.

The matter before the Rent Restrictions Tribunal (under the Tribunal) came for hearing on 30th May 1985. Both parties were represented by legal counsel, Mr Suchak for the plaintiff, and Mr Keverenge, for the defendants. By consent of the parties the Tribunal made an order which finally dealt with the dispute between them. The order read:

“By consent parties to this application hereby undertake to cause no trouble to either side. If and when the landlord or his agent wish to increase the rent or evict the applicant, legal steps will be taken by filing rent application to this Tribunal and without any rent order from this Tribunal the applicant shall not be evicted or his rent increased.”

It is in evidence that since that order was made the plaintiff has enjoyed quiet possession of the suit premises paying the same amount of rent as before. Consequently the plaintiff did not wish to proceed with the prayers for injunction and declaration.

The plaintiff was not right to institute concurrent proceedings before two separate courts. (Section 6 of the Civil Procedure Act refers). Having brought a suit before the Tribunal in effect seeking a declaration that the defendants were not entitled to increase rent for the suit flat or to evict her without the consent of the Tribunal, it was not open to her to institute other proceedings before this court praying for more or less precisely the same remedies. It should however be noted that the claim for damages was not before the Tribunal. The plaintiff laments that she was compelled to hire the services of legal counsel to advise her on the matter, she and her son suffered undue inconvenience and anxiety due to harassment which was caused by the 3rd defendant.

The plaintiff spent money to get the services of an advocate, had to go to Makupa and Central Police Stations in connection with the 3rd defendant's threats to eject them and because of that PW 3 had to suspend what he was doing. However, how much the plaintiff incurred in legal costs was not stated. That was an item of special damages which was supposed to but was not specifically pleaded. It cannot be treated as part of general damages in light of the fact that it is specific. The plaintiff did not in any case indicate in her evidence, nor did her son, the amount they spent in that regard. In any case costs of the proceedings before the Tribunal were costs in the cause. They were not claimable here.

As for general damages the 3rd defendant was not guilty of repeated acts of harassment, if harassment there was. He went to the suit flat once and demanded a higher rent than what was then payable. He did not go back a second time. The person who contacted PW 3 by telephone and demanded that he report at Central Police Station was not identified. We cannot say with any certainty that it was any of the defendants. A demand for higher rent even though accompanied by threats if the same are not put into effect, and particularly if it is isolated, will not to my mind entitle a party to damages. I would be of a different view if the demand is repeated, is accompanied with acts intended to compel the tenant to either vacate the premises or pay a higher rent. Landlords have been known to demand from their tenants the payment of higher rents from time to time. It will be preposterous if courts were to award damages for any demand of rent made by a landlord and which is accompanied with threats of eviction.

The policy of the law is to deal with only those acts on the part of the landlord which are intended to cause annoyance to his tenant or tenants. In the instant case it has not been shown that any of the defendants was guilty of such conduct. The 3rd defendant was not on the date of the suit attached to Nyali Barracks, from where the anonymous caller telephoned PW 3. His address is shown in the plaint to be in Kitale not in Mombasa. The plaint was filed in May 1985 two or so weeks after the telephone call. It cannot therefore be presumed that he was the caller.

I am disinclined to grant the prayers sought. The suit fails. It is dismissed.

No orders as to costs.

Dated and Delivered at Mombasa this 28th Day of July, 1989

S.E.O.BOSIRE

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JUDGE