



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO 2637 OF 1987

PIONEER GENERAL ASSURANCE SOCIETY LTD.....PLAINTIFF

VERSUS

D W KARANJA.....DEFENDANT

JUDGMENT

This is an application under 0.35 r 1 for a judgment for Kshs 295,137/- with costs and interest thereon as claimed in the plant.

The claim arose out of the defendant's occupation of the premises in the Gilfillan House from July 1, 1981 upto July 31, 1987 for arrears of rent and proportionate share of site value tax. The details of the claim are set out in paragraph 4 of the plaint according to which the defendant had first occupied 1500 sq ft from July 1, 1981 to January 31, 1985 at the monthly rent of Kshs 5,000/-. He then shrank the area of occupation to 350 sq ft at the correspondingly reduced rental of Kshs 1170/- pm from February 1, 1985 to July 31, 1987. His share of site value tax for this period amounted to Kshs 45,037/-.

It is not clear if the defendant is still occupying the suit premises or any part of it since there is no claim for rent accruing from August 1987 onward.

In the absence of any averment I make no finding about it.

The defendant in his defence averred that there was no relationship of landlord and tenant between him and the plaintiff. He also disputed the size of the area under his occupation. He claimed to be a sub-tenant of Midas Marketing Services since the inception of his occupancy of the premises.

He also averred that his sub-tenancy is controlled tenancy under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act. He claimed that the rent was increased without a notice under section 4 of the Act. In his oral submissions before me Mr Masese even argued that the court has no jurisdiction to entertain the claim under the said Act.

In connection with the defence about the area, I noted that the plaintiff had in fact averred in paragraph 4 of the plaint that since February 1985 the defendant had been occupying only 350 sq ft which almost corresponds with the defendant's admission that he occupied about 259 sq ft.

The plaintiff did not state that the defendant had ever occupied 1850 sq ft. It stated that the area occupied

by the defendant from July 1, 1985 was 1500 sq ft from February 1, 1985 to July 31, 1987. whereas the defendant did not deny that he ever occupied 150 sq ft as averred in the plaint. He merely concurred up a figure of 1850 sq ft which was never mentioned in paragraph 4 of the plaint.

What is more surprising is the fact that the defendant did not allege that he ever paid any rent at all to Midas Marketing Services, the purported head-tenant, for the last about 10 years since he occupied the premises. He did not aver at what rental the alleged sub-tenancy subsisted. I can see the reason for his silence on this topic. There was never a sub-tenancy as alleged or at all. The affidavit of T G Kassam in support of the application and the annexure of correspondence since October 1977 to December 1977 make it abundantly clear that the allegation of sub-tenancy is a sham. In fact he unequivocally withdrew the allegation in his letter dated December 6, 1977 in these words:

“We now wish to withdraw the allegation (of subtenancy) which we should not have made in the first place”.

I do not wish to elaborate on other letters annexed to the aforesaid affidavit. Suffice it to affirm that there was no sub-tenancy as alleged or at all. The defendant was a direct tenant as alleged in the plaint at the monthly rents as particularized in the plaint. I find that he had occupied 1500 sq ft at first and had been occupying about 300 sq ft since February 1, 1985 onward. Since there is no statement that the sum of Kshs 295,137/- or any part thereof or at all has been paid, I find that the defendant owes to the plaintiff the said sum of Kshs 295,137/- as claimed which sum is due and payable forthwith.

The last point I have to deal with is about the law under section 4 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act which concerns an increase of rent without notice as alleged by the defendant. The law is quite clear on this point, but in the instant case the defendant did not annex to his replying affidavit a single receipt or document showing that the rent per month was ever increased by the last about 10 years. There is not a single receipt or document annexed to show that he paid any rent at all to Midas or to the plaintiff. It is outrageous for any one to put forth such bogus arguments when he is using the Landlord's premises for the last about 10 years without paying a single rent.

It was also argued that the court had no jurisdiction to entertain this suit because the alleged sub-tenancy is a controlled tenancy. Both advocates relied on the provisions of section 12 of the Act and cited no authorities. Mr Khanna, however, submitted that since the claim is only for arrears of rent uncoupled with vacant possession, the court is competent to deal with it. He referred particularly to section 12(1)(e) which reads:-

“12. (1) A Tribunal shall, in relation to its areas of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power

(a)

(b)

(c)

(d)

(e) To make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy”. (Underlining mine).

Having carefully studied the relevant sections of the Act, I entirely agree with Mr Khanna. I find no merit in Mr Masese's submissions in law and or on facts. I, therefore, grant the plaintiff's application for summary judgment filed on 7th August, 1987 with costs and enter judgment for the plaintiff with costs as

prayed in the plaint.

October 26, 1987

RAUF

JUDGE