



IN THE COURT OF APPEAL

AT KISUMU

(Coram: Gachuhi, Apaloo & Masime JJA)

CIVIL APPEAL NO 25 OF 1987

BETWEEN

OWUOR.....APPELLANT

AND

KENYA MEDICAL RESEARCH INSTITUTE, MALARIA AND

OTHER PROTOZOL DISEASES RESEARCH CENTERRESPONDENT

JUDGMNET

(Appeal from a judgment and decree of the High Court at Kisumu, Butler-Sloss J)

June 27, 1988, **Gachuhi, Apaloo & Masime JJA** delivered the following Judgment.

The short point of this appeal, is whether the learned judge was right in holding, as a matter of law, that on the determination of a tenancy, a landlord cannot refuse to accept possession of the premises because the tenant committed a breach of the covenant to repair. The landlord seems to have thought that he could do so.

We are satisfied that as a matter of law, the landlord could not refuse. Indeed, counsel for the appellant now concedes that he could not do so. So the legal position in this case is that the tenant only incurs an obligation to repair. It is now conceded that such repairs as there was, was done by the tenant and so the landlord did not expend any funds of his own for this purpose.

So the only compensation that the landlord could receive would be mesne profits for any period the tenant could be shown to have held over. That was shown to be a period of one month – that is up to April 30, 1983. The learned judge awarded mesne profits – the equivalent of one month's rent for this.

In our opinion, there is no legal liability on the respondent to pay any damages beyond this. In his memorandum of appeal, the appellant invites us to reverse the judgment and award him damages on the various heads claimed in the plaint.

We are satisfied those claims were based on a mistaken view of the law. In our opinion, not only was any special damages alleged not proved, nor has any general damages been proved beyond the cost of repairs which the tenant has met.

That being so, no good grounds exist for disturbing the judgment appealed from. We think this appeal

fails and ought to be and is dismissed with costs.

Date and delivered at Kisumu this 27th day of June , 1988

J.M GACHUHI

.....

JUDGE OF APPEAL

F.K APALOO

.....

JUDGE OF APPEAL

J.R.O MASIME

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR