

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS

CIVIL CASE NO.4071 OF 1983

**H C B MISTRI CHSHA.....
PLAINTIFFS**

As personal representatives of the late C B Mistri

AND

**B P BAGA t/a A BC CLOTHING FACTORY
DEFENDANT**

JUDGMENT

The plaintiffs herein are the legal representatives of the late C B Mistri who owned the suit premises. By a lease dated the 4th February, 1977 the suit premises was leased to the defendant for a period of five years and eight months from the 1st November 1976 and yearly rent of shs.48,000 payable monthly in advance by monthly instalments of shs12.000. C B Mistri died on the 2nd May 1981 leaving a will and two personal representatives were appointed executors and trustees in Probate & Administration cause No 310 1982.

Under the lease the defendant was to vacate on the 30th June 1982 but he never vacated despite being asked to do so. He (defendant) eventually vacated the suit premises at the end of January 1983. This was often this suit had been filed in this court.

When the defendant vacated the suit premises he left them in poor conditions contrary to the terms and conditions in the lease agreement. The plaintiffs instructed R R Oswald & Co to carry out inspection of the suit premises and assess the damage caused. This was done and their report produced in evidence (Exhibit 1). They were paid for this work. The damage done was calculated at shs.65,720

The rent in the lease was 4,000- per month fixed in 1976 but the plaintiffs have received offers of rent in the sum of shs.15,000 per month. In fact at the moment half the suit premises is being let at shs.7,000 per month.

What has been stated above remains unchallenged since this suit proceeded by way of formal proof after the defence filed was struck off.

Having considered the pleadings in this case the evidence of Hosider "Cawasji Bapuji Mistri (PW1) and the supporting documents I am satisfied that the plaintiffs' claim has been sufficiently proved.

According to the calculations mesne profits are for seven months at shs.15,000/- per month. The total comes to shs, 105,000. According to the report (Exhibit 2) the damage done was calculated at shs,65,720 and on top of this we must add shs.65,720 being the charges of those who carried out inspection work.

In view of the foregoing I enter Judgment in favour of the plaintiff for shs,105.000 being mesne profits for the seven months and for shs.66,720/= plus interest and costs of the suit.

Order accordingly.

Delivered at Nairobi this 6th day of April, 1984.

E O'KUBASU

JUDGE

6.4.1984