

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 94 OF 2015

MARY W. NYONGESAPLAINTIFF

VERSUS

ANTHONY MUGALA....DEFENDANT

JUDGEMENT

The plaintiff avers that at all material times to this suit the plaintiff is the proprietor and land lady in respect of the demised premises known as Amalemba site and Service Scheme Phase 1, House No. 43 whereas the defendant is the tenant in respect of the said premises. The plaintiff avers that the defendant has not been paying the agreed rent as and when it is due and is in arrears and has become a persistent defaulter. On 4th of December, 2014 the plaintiff gave the defendant notice terminating the defendant's said tenancy with effect from 31st of January, 2015. Despite being duly notified as stated, the defendant has not voluntarily moved out of the demised premises and persists in such failure to date hence this suit. The plaintiff states that the notice of termination having taken effect she is entitled to immediate vacant possession of the demised premises. The plaintiff therefore claims for vacant possession of the demised premises and the eviction of the defendant, his family members, agents and or servants from the demised premises. The plaintiff also claims for rent arrears in respect of the demised premises from the month of October, 2014 at the rate of Ksh. 8,000/= per month as stated until the time when the plaintiff obtains vacant possession of the said demised premises. The plaintiff prays for judgment against the defendant for:

1. Immediate vacant possession of the dwelling premises situated at Amalemba Site and Service Scheme Phase 1, House No. 43 and the eviction of the defendant, his family members, agents and or servants from the said demised premises.
2. Immediate payment of the sum of Ksh. 8,000/= per month from the month of October, 2014 until when the plaintiff is given vacant possession of the demised premises.
3. Costs of this suit.
4. Interest on (b) and (c) above at court rates.

The defendant states that sometime in the year 2014 he entered into a tenancy arrangement with one Nicholas Nyongesa who was his landlord as regards the suit property at a monthly rent of Ksh. 8,000/= and by the end of the month of February, 2015 he had amicably vacated the said property. That by the time this suit was being filed in the month of March, 2015 he was no longer a tenant in occupation of the suit property.

This court has carefully considered the evidence and the submissions therein. PW1 testified that she is the proprietor and landlady in respect of the demised premises known as Amalemba site and Service Scheme Phase 1, House No. 43 whereas the defendant is the tenant in respect of the said premises. The plaintiff avers that the defendant has not been paying the agreed rent as and when it is due and is in arrears and has become a persistent defaulter. She produced demand notices to the defendant as exhibits. She confirms that the landlord is indicated as Nicholas Muhati who was the caretaker and that she is now in possession of the house. Payment was in cash and the defendant last paid in October 2014. DW1 the defendant testified that he paid rent in full and vacated the premises. He entered the tenancy agreement with one Nicholas and does not know the plaintiff. The said Nicholas never testified in court, no lease agreement was produced in court as well. I find that the plaintiff has failed to prove her case on a balance of probabilities. She is now in possession of the house and the issue of vacant possession can also not stand. I find this case is not merited and I dismiss it with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 8TH DECEMBER 2020.

N.A. MATHEKA

JUDGE