



Maina v Ndolo (Civil Suit 3509 of 2018) [2023] KEMC 72 (KLR) (2 March 2023) (Judgment)

Neutral citation: [2023] KEMC 72 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**

CIVIL SUIT 3509 OF 2018

JP ADUKE, SRM

MARCH 2, 2023

BETWEEN

FRANCIS MAINA PLAINTIFF

AND

TOM NDOLO DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant seeking one hundred and ninety one thousand and 50 Kenya Shillings and interest and costs of the suit on the ground of breach of contract. In the plaint dated 9th April 2018, the plaintiff avers he entered into a Tenancy Agreement over premises on LR Number Nairobi/Block 93/10 Golden Gate at a consideration of KES 50,0000/-.
2. Further, that following the said agreement, the defendant was to cater for redecoration costs in the event he moved out of the premises.
3. The Plaintiff blames the Defendant for breach of contract. The Plaintiff further avers that the said loss of KES 191050/- was solely caused by the breach of contract by the Defendant.
4. The particulars of breach are captured in para 7, 8, 9 and 10 of the Plaint. The Plaintiff prays for KES 191,050/- costs of the suit and interest.
5. Return of Service on Record shows that the defendant was served with the suit papers. The Defendant entered appearance and filed a defence within the stipulated period. The hearing was before me in 2022 and there was no appearance for the defence. Plaintiff Counsel drew the court's attention to the return of service confirming service of the hearing notice on the defence. Plaintiff Counsel made an oral application to close the defence case in their absence. The court allowed the said application.
6. The issue for determination before this court is one:
 1. Whether or not a contract existed and if the same was breached and therefore enforceable.



7. Section 3 of the *Law of Contract Act*, Cap 23 Laws of Kenya provides that:
1. No suit shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person unless the agreement upon which such suit is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.
 2. No suit shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods, unless such representation or assurance is made in writing, signed by the party to be charged therewith.....
8. I have perused the statement of defence and the documents annexed to the plaint on record, and note that there is a Tenancy Agreement dated 15th January 2011 annexed to the Plaint and produced as Plaintiff Exhibit 1. I note with concern that the said Agreement does not meet the requirements of section 19 of the *Stamp Duty Act*. That notwithstanding, paragraph 6 of the said Agreement reads “At the termination of the tenancy, the Tenant shall redecorate the said premises internally with good quality paint, varnish and polish....” From paragraphs 6 and 7 of the Plaint before me, by his own admission, it is apparent that the Plaintiff and not the Tenant/Defendant herein redecorated the premises upon termination of this Agreement. This is evident from the Principle of Agency as the handy man doing the works was answerable to and directly an agent of the principal, being the Plaintiff.
9. It is settled law that parties are bound by their contracts and their pleadings. There’s a plethora of case law in this regard. This court cannot descend into the arena of battle to amend the provisions of contracts for the parties herein. If the plaintiff and the defendant agreed that the Defendant would be in charge of redecoration, then this court cannot come in and amend the contract to imply that the Defendant would only be in charge of payment of the same and not control. If the plaintiff and the defendant agree to have notices in writing in respect of any review in the amount of rent payable, then this court cannot come in and amend the said provision of the contract.
10. I have also perused and considered the Plaintiff’s and Defendant’s written submissions in entirety, and all the pleadings on record. In view of the above reasons, I find the suit unmerited and the alleged contract unenforceable. For the avoidance of doubt, I find that there was breach of the contract before me, and the breach was occasioned by the Plaintiff both in respect of unilateral variation of the rent payable annually and the person to do redecoration of premises upon delivery of vacant possession. Suit dismissed. No orders on costs. File closed.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DATED THIS 2ND MARCH 2023 IN THE ABSENCE OF THE PARTIES.

In the presence of :

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff-

(Name, Signature, Date)

For the Defence:



(Name, Signature, Date)

