



REPUBLIC OF KENYA



**Vincent Chokaa t/a V.Chokaa & Co Advocate v Bertha Wawira Muchira
(Commercial Case 005 of 2021) [2021] SCC 3 (KLR) (13 May 2021) (Judgment)**

Vincent Chokaa t/a V.Chokaa & Co Advocate v Bertha Wawira Muchira [2021] eKLR

Neutral citation: [2021] SCC 3 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI SMALL CLAIMS COURT
COMMERCIAL CASE 005 OF 2021**

BJ OFISI, RM

MAY 13, 2021

BETWEEN

VINCENT CHOKAA T/A V CHOKAA & COMPANY ADVOCATE CLAIMANT

AND

BERTHA WAWIRA MUCHIRA RESPONDENT

JUDGMENT

1. By a plaint dated 15th May 2019, the claimant seeks for judgment to be entered against the respondent for;
 - a. Kshs 65,000/— plus interest at 12% until the same is paid
 - b. Costs of this suit
2. The claimant avers that he was a tenant of the respondent through a tenant lease agreement dated 16/12/2016 at a monthly rent of Kshs 32,000/=.
3. He took possession of the house and deposited a 2 month deposit of Kshs 65,000/= and a one month's rent of Kshs 32,500/= paid by cheque to the respondent's account. The claimant further avers that on or about the 1st day of March 2019, he gave notice of termination of the tenancy lease agreement having paid all rents due and outstanding.
4. 67,000/- being the 2month's rent deposit (security) unlawfully being held by the respondent.
5. The respondent entered appearance and filed her statement of defence. She admitted entering into a lease agreement with the claimant but denied owing him any money. She finally urged the court to dismiss the claimant's claim against her with costs.



Summary of the claimant's case

6. The hearing of the suit proceeded on 11/5/2021 wherein the claimant tendered evidence. He adopted his witness statement dated 15/5/2019 as his evidence in chief. He produced his documents as they appear in the list of documents filed on 15/5/2019 as pexh.1-3.
7. It is the claimant's evidence that he has never been paid his money by the respondent. He moved out of the premises when it was in good condition. The same was verified by the respondent's agent. The claimant further testified that the respondent refers to a third party who is not a party to the proceedings. The mpesa statement does not bear the claimant's name as a party to the lease agreement and the alleged receipts are all forgeries. The receipts do not bear the signature of the maker, they are not addressed to the respondent or anybody else, they do not have business numbers, VAT numbers or pin numbers.

Summary of the respondent's evidence

8. The respondent adopted her witness statement dated 30/4/2021 as her evidence in chief and produced her documents dated 30/4/2021. It is her evidence that she leased her premises to Khadija who worked closely with the claimant and that she has the mpesa bills and statements.
9. After the tenant moves out, they check the condition of the premises. They agreed with Khadija to renovate the premises. They did electrical, carpentry and had to put a lock since all the locks were spoilt.
10. Khadija was aware of the repairs since they had stayed in the premises for three years. It is her evidence that she reimbursed the money to Khadija.
11. On cross examination, the respondent confirmed that the agreement was between the firm of Chokaa and her. The agreement describes the relationship between the tenant and the landlord. The tenant was V.Chokaa Advocates.

Issues for determination

12. The main issue for determination is whether the claimant is entitled to Kshs 65,000/=.
13. It is not in dispute that the sum of Kshs 65,000/= was deposited. I have looked at the agreement adduced in evidence. It is dated 15/12/2016.
14. Clause 9 of the agreement stipulates that the deposit will be held as security for house repairs and any outstanding bills.
parties signed the lease.
15. I find that the said premises ought to have been repaired and/or repairs done when the plaintiff was in possession. He did not avail any proof that he carried out any paint work or repairs after moving out. Consequently, his claim fails.
16. I find that he has failed to prove it on balance of probability since the deposit was already consumed for purposes of rehabilitating the premises.
17. The claim is dismissed. Each party shall bear their own costs.

HON B. J OFISI (MRS)

RESIDENT MAGISTRATE

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF MAY 2021



In the presence of;

Court assistant: Helidah

Mr. Michira... Claimant's Advocate

In the absence of;

Respondent

