



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO. E247 OF 2019

BETWEEN

ALLGATE LIMITED PLAINTIFF

VERSUS

VISION INSTITUTE OF PROFESSIONALS 1ST
DEFENDANT

ANSON MUYA 2ND
DEFENDANT

MICHAEL CHIRCHIR 3RD
DEFENDANT

JUDGMENT

Background and Introduction

1. The dispute before the Court arises from a lease arrangement entered into between the Plaintiff and the 1st Defendant. The Plaintiff avers that on 10th March 2014, it executed a formal lease agreement with the 1st Defendant in respect of the premises situated on **L.R. No. 209/7120**, specifically covering the 2nd and 4th floors of the building owned by the Plaintiff. Subsequently, on 29th

November 2016, the Plaintiff extended the lease to include the 3rd floor of the said premises, thereby granting the 1st Defendant occupation of three floors within the property.

- 2.** The Plaintiff contends that the 1st Defendant subsequently defaulted in the payment of rent due under the lease. As a result of this default, the Plaintiff issued a formal demand letter requiring the 1st Defendant to settle outstanding rent arrears amounting to Kshs. 29,730,553/=, together with compounded interest at the rate of 5% on the overdue sums. Despite repeated demands, the Plaintiff's attempts to recover the outstanding rent from the 1st Defendant proved unsuccessful. Efforts to enforce the guarantees against the 2nd and 3rd Defendants equally failed, thereby compelling the Plaintiff to institute the present proceedings by way of a Plaint dated 6th August 2019, in order to secure recovery of the sums owed.
- 3.** The Plaintiff now seeks judgment against the Defendants, jointly and severally, for payment of Kshs. 29,730,553/= being the outstanding rent arrears, interest on the said sum at the rate of 5% per month from 1st October 2018 until payment in

full, an award of general damages, costs of the suit and interest on the decretal sum at court rates from the date of filing until payment in full.

4. The Defendants filed a joint response to the Plaintiff's claim. In their Further Amended Statement of Defence, Counter-Claim, and Set-Off dated 28th July 2021, they concede having entered into the lease agreement dated 10th March 2014. However, they deny owing the Plaintiff the sums claimed. The Defendants contend that the Plaintiff was in breach of its obligations under the lease, particularly by failing to provide adequate security in the common areas adjacent to their premises, which compelled them to incur additional and unnecessary expenses. Furthermore, they allege that the Plaintiff's conduct caused delays in their registration with the National Industrial Training Authority (NITA), resulting in the loss of students and income.
5. For the foregoing reasons, the Defendants seek judgment against the Plaintiff for Kshs. 5,000,000/= as a refund of the security deposit, Kshs. 4,176,993.85 as a refund for electricity

charges; Kshs. 630,000/= as a refund for cleaning services and Kshs. 28,580,625/= as compensation for loss of business. In the alternative, they pray that these amounts be set off against any claim advanced by the Plaintiff. Additionally, the Defendants claim judgment in the sum of Kshs. 2,792,242/= for irregular electricity surcharges, and Kshs. 2,700,000/= being rent payments made by cheque to the Plaintiff but not accounted for. They further seek interest at court rates together with the costs of the suit.

6. In response to the Defendants' Further Amended Defence and Counter-Claim, the Plaintiff filed a reply dated 26th October 2020. In that reply, the Plaintiff reiterated that the 1st Defendant had repeatedly defaulted in the payment of rent and service charges during the subsistence of the lease agreements. They outlined several instances of non-compliance and emphasized that the 1st Defendant had even sought indulgence regarding electricity bills, requesting that the outstanding amounts be settled within one year.

7. Regarding the claim for cleaning services the Plaintiff contended that responsibility for cleaning the leased premises lay with the Defendants. Consequently, any claims for reimbursement of cleaning costs were untenable. On the issue of security, the Plaintiff maintained that the premises were always adequately secured, and further noted that the Defendants had engaged their own security personnel despite the Plaintiff's reservations. The Plaintiff argued that the Defendants' claim for loss of business was baseless and amounted to an afterthought. They asserted that the Defendants had failed to produce evidence of any application for accreditation that was rejected due to the absence of a lease, and characterized the claim as a tactic to evade their financial obligations. The Plaintiff highlighted that the Defendants themselves admitted to experiencing a downturn in business and financial difficulties, which they acknowledged as the reason for their inability to pay the arrears.

8. The Plaintiff emphasized that despite entering into several payment arrangements and consent orders for settlement, the Defendants consistently failed

to honor their commitments. For these reasons, the Plaintiff urged the Court to dismiss the Defendants' Counter-Claim with costs.

9. At the hearing of the matter, the Plaintiff presented a single witness, **Mr. Shriram Phadke**, its Finance Director, while the Defendants called **Mr. John Kamau Mburu**, the Director and Financial Manager of the 1st Defendant. Upon the close of their respective cases, both parties filed written submissions, which I have duly considered. The oral testimony of the witnesses substantially mirrored their previously filed witness statements and the pleadings already on record, each reinforcing the positions advanced by their respective parties. In view of this alignment, I find it unnecessary to reproduce the entirety of their testimony in this judgment. Instead, I shall refer to the relevant portions of the evidence and submissions where appropriate in the course of my analysis of the facts and issues in dispute.

Analysis and Determination

Breach of contract by the Defendants:

- 10.** At the heart of the dispute is whether the Defendants breached the lease agreement and therefore whether the Plaintiff is entitled to the prayers sought in the Plaint.
- 11.** It is not in dispute that there existed a lease agreement between the Plaintiff and the 1st Defendant, dated 10th March 2016. That Lease has been produced by both parties. It relates to the 2nd and 4th floors of the premises in question. The lease was for a term of six years from 15th August 2013. According to **clause 1(d)** of the lease, in addition to paying rent, the Defendants were also responsible for paying a security deposit and service charge, out of which the lessor would provide security for the exclusive protection of the building and the common areas only, cleaners for the common areas only, electricity consumed for the common areas, water and maintenance in the common areas.
- 12.** Other than these, it was upon the 1st Defendant to pay for water and electricity as stated in **clause 1(e)** of the Lease. DW1 confirmed during cross examination that the lease had been executed by

the guarantors, who are the 2nd and 3rd Defendants in this suit.

- 13.** It is well settled in jurisprudence that parties are bound by the terms of their agreements. The Court of Appeal in **Mwaringa V Waashe, [2025] KECA 297 (KLR)** affirmed the legal position that courts cannot rewrite contracts for parties and further that they are bound by their own terms of agreement. It therefore means that the Defendants were bound by the terms of the lease agreement having executed it.
- 14.** With respect to the 3rd floor, the Plaintiff has produced an offer letter dated 1st September 2010, for a total of 6 years with rent and service charge as stipulated in the offer letter. The offer letter also refers to the standard lease with the addition of the specific terms as indicated in the offer letter. The said offer letter was signed by the 1st Defendant on 29th October 2010 in acceptance of the terms. From the record, it appears that the lease was prepared but not fully executed.

15. Indeed, PW 1 in his testimony confirmed that the 3rd floor had no lease executed even though he stated that the terms for the 3rd floor were different from the terms of lease for the 2nd and 4th floor. He also confirmed that the amount claimed was for all the 3 floors. While I agree with the Defendants that an offer letter is not similar to a lease, it is also trite law that contracts need not necessarily be in writing; they may be oral or may be inferred from the conduct of the parties and the circumstances surrounding their dealings. In this regard, **Section 119 of the Evidence Act** is instructive. It provides that:

“The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in relation to the facts of the particular case.”

16. This statutory provision empowers the Court to draw inferences from the ordinary course of business and human interactions, particularly

where consistent conduct and acknowledged performance support the existence of a contractual relationship, even in the absence of a formal written agreement. In the matter before the Court it is quite clear that there was an intention to create a binding agreement on the terms provided in the officer letter. The Defendants have not denied that they did indeed occupied the premises on the 3rd floor of the premises. They cannot be heard to deny liability for the rent after having benefitted from the same.

- 17.** Having established the contractual obligations of the parties in respect to the contracts, the next issue is whether there was a breach of these obligations by the Defendants. One only needs to look through the evidence on record to see the amount of correspondence exchanged between the parties in respect of outstanding rent, service charge and other utility bills due under the lease to come to an affirmative answer as I do. The Defendants admitted that there were outstanding amounts, they sought time to pay the same, defaulted on their promises and got numerous indulgences from the Plaintiff. That is

demonstrated in the correspondence on record and by the testimony of DW1.

Remedies for Breach of Contract:

18. The general principal with respect to remedies by way of damages for breach of contract is as enunciated in **Dharamshi V Karsan, [1974] EA 41.** The Court of Appeal for East Africa summarized this as follows:

“As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. The measure of damages is in accordance with the rule established in the case of Hadley v Baxendale (1854) 9. Exch.341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be

reasonably contemplated by the parties at the time the contract was made and a probable result of such breach. Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved.”

- 19.** For the plaintiff to succeed in its claims for special damages, the same must be specifically pleaded and proved. The Defendants contend that the Plaintiff had not proven the special damages of Kshs 29,730,553/- as pleaded. The Defendants relied on the Court of Appeal decision in **David Bagine V Martin Bundi, [1997] eKLR** where the Court stated that *special damages must be pleaded and strictly proved*. Indeed, from the record before me presented by the Plaintiffs, the only tabulation of the outstanding dues is that found at page 37 of the Plaintiff’s documents. As correctly pointed out by the Defendants, that is not a formal statement of account as it has been

prepared by hand and its veracity cannot therefore be confirmed.

20. The apprehension raised by the Defendants regarding the figures in the tabulation is heightened by the testimony of PW1 who stated that he was not in a position to confirm the exact date when the 1st Defendant vacated the premises and particularly the 3rd floor, and instead noted that the vacation was on diverse dates. However, it is on record that by a letter dated 20th June 2018 the 1st Defendant confirmed that it wished to vacate the 4th floor with effect from 1st August 2018. In the absence of any other evidence to the contrary, I am inclined to agree that this is the date that the 1st Defendant vacated the premises.

21. The tabulation presented by the Plaintiff however includes rent for the 4th floor premises beyond August 2018, in contradiction to the stated letter. Even if I were wrong on this, the doubt on the accuracy of the figures is further increased by the acknowledgement of PW1 that the amount of Kshs.2.7 million which had been credited directly

to the Plaintiff's account by the 1st Defendant had not been accounted for.

22. I am guided by the decision of the Court of Appeal in **David Bagine V Martin Bundi [supra]**, in which the Court cited Lord Goddard C.J. in **Bonham Carter V Hyde Park Hotel Ltd, [1948] 64 TLR 177** where it was emphasized that:

“Plaintiffs must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.”

In the absence of a proper statement of account and supporting documents I am unable to grant the amount claimed by the Plaintiff. I further note that the statement of account presented by the 1st Defendant is issued ‘subject to corrections if any’ thereby raising doubts as to its finality. The other

statements for the period ending 2019, also produced by the 1st Defendant, are incomplete.

The Counterclaim:

23. The Defendants contend that they are entitled to the sum of Kshs 5,000,000/= as security deposit. This claim is however not proved with documentary evidence and neither is the claim for refund on electricity, noting as earlier stated, that the 1st Defendant was obligated under the lease to meet their electricity and cleaning services. Any such payments ought to have been supported with actual proof of payment such as receipts. I have not been presented with any.

24. Equally the claim for loss of business is not supported. Informed by the decision in **Wraight Ltd V P.H.&T. (Holdings) Ltd, (1968) 13 BLR 27**, if a party were to succeed under this heading, it would be imperative for them to provide evidence quantifying the loss of business suffered. I have not been provided with any. The letters requesting the signed lease cannot on their own, without further evidence prove that indeed the license was not granted to the 1st Defendant solely

on this account. There is nothing on record to confirm the exact number of students who were unable to enroll of the program and the exact accompanying loss quantified.

Disposition

25. For the reasons that I have stated, I am inclined to dismiss both the suit as well as the counterclaim and set off for lack of sufficient evidence. Each party shall bear their own costs of the suit and counterclaim.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 20TH DAY OF FEBRUARY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Atika for the plaintiff

Ms Wadima HB for Mr Ade for the defendants

Court Assistant: Lillian