

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT NAIROBI

ELC CASE NO. 33 OF 2009

PUNITA JAYANT ACHARYA.....PLAINTIFF

(Suing as the Administrator of the Estate of

the Late Sushila Anantrai Raval)

VERSUS

AFAPACK ENTERPRISES LIMITED.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit on 28/09/2009 as **High Court Civil Suit Number 530 of 2009** in her capacity as the executrix and administrator of the estate of the late Sushila Anantrai Raval, the registered proprietor of the land reference number 1870X/38("the Suit Property"). On her appointment as executrix, she sought to execute a new lease with the Defendant who was a tenant in the Suit Property during Sushila Anantrai Raval's lifetime since the lease had expired. She sent the new lease to the Defendant, but the parties failed to agree on the terms of the new lease and in particular, the increment of rent from kshs.60,000/= to 75,000/= and repairs to be carried out on the premises. The Defendant did not sign the new lease, thereby bringing the tenancy between the Plaintiff and the Defendant within the purview of the Landlord and Tenant (Shops, Hotel and Catering Establishments) Act as a controlled tenancy.

2. The Plaintiff contended that the Defendant requested to have some repairs undertaken on the Suit Property but subsequently refused to vacate the premises to allow for the repairs to be done. The Plaintiff issued a notice of intention to terminate the tenancy which the Defendant did not contest. The Defendant failed to comply with the notice prompting the Plaintiff to file this suit seeking an order to compel the Defendant to vacate and hand over vacant possession of the suit property to the Plaintiff within 7 days, or that in default, the Defendant be evicted from the said property with the assistance of the Office Commanding Parklands Police Station. She also sought a permanent injunction to restrain the Defendant from interfering with her quiet possession of the suit property and the costs of the suit.

3. The court entered interlocutory judgement against the Defendant who failed to file a defence on time .The Defendant moved to the Court of Appeal contesting the interlocutory judgement but the Court of Appeal declined to set aside the interlocutory judgement.

4. The Plaintiff gave evidence and produced the documents in support of her claim. The court has considered the claim, evidence and the submissions filed by the Plaintiff. Section 4 of the Landlord and Tenant (Shops, Hotel and Catering establishments) Act provides that a landlord who wishes to terminate a controlled tenancy must give the tenant notice in the prescribed form. The Plaintiff issued to the Defendant (a notice of termination which was to take effect on 15/04/2009. If the Tenant wished to dispute the notice, then it should have notified the landlord of its unwillingness to comply with the notice or referred the matter to the tribunal as provided by Section 6 of the Act. There is no evidence that the Defendant contested the notice and so the notice given by the Plaintiff took effect from the date specified in it.

5. Having failed to contest the notice within the time required by the law, the Defendant has no right to continue occupying the suit premises. The court grants the prayers sought in the plaint dated 28/09/2009.

6. The Defendant shall vacate the suit premises within 30 days of the date of this judgement. In default, the Defendant shall be evicted from the suit premises with the assistance of the Officer Commanding Parklands Police Station. The Defendant shall pay costs of the suit.

Dated and delivered at Nairobi this 13th day of December 2019

K.BOR

JUDGE

In the presence of:-

Mr. J. Chigiti holding brief for Mr. Munyua for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant