



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC. CASE NO. 353 OF 2016

BHANGANJI DAYALAL RAMJI..... PLAINTIFF

VERSUS

MOMBASA CALIBRATIN SERVICES LIMITED.....DEFENDANT

MATHENGE NGIBUINI.....DEFENDANT

JOSEPH MWENDA CHEGE.....DEFENDANT

JAMES GATURU KIARIE.....DEFENDANT

JUDGMENT

1. The Plaintiff has filed this suit against the Defendants jointly and severally seeking;

- a. An order directing the 1st Defendant to quit and/or vacate and/or hand over and/or deliver and/or give to the Plaintiff, vacant possession of the suit premises situated on Plot Number 264/1/MN forthwith, and in default, to be acted therefrom at the costs of the 2nd to 4th Defendants.
- b. Mesne profits since the termination of the lease until vacant possession be given by the 1st Defendant, and/or 2nd, 3rd & 4th Defendants.
- c. Costs of this suit to be borne by the 1st Defendant and/or 2nd, 3rd & 4th Defendants.
- d. Interest on (b) from the date of filing this suit at court rates and on (c) from the date of judgment at court rates, until payment in full.
- e. Further or other relief as this Honourable Court may deem fit and expedient to grant.

2. The Defendants who were duly served with copies of plant and summons to enter appearance neglected to enter appearance and/or file defence within the stipulated period.

3. By a request of judgment dated 12/1/2017 and filed in court on 13/1/2017 interlocutory judgment against the Defendants was entered on 27/1/2017. The matter then proceeded for formal proof.

4. It is the Plaintiff's case that he is the proprietor of Plot Number 265/1/MN situated at Bamburi within the County of Mombasa. The Plaintiff entered into a lease with the 1st Defendant for five years, one

month commencing on 1/3/2011 and expiring on 31/3/2016. The 2nd to the 4th Defendants were guarantors to the lease.

5. That vide a letter dated 9/2/2016, the Plaintiff offered the 1st Defendant an option to renew the lease in the rental terms contained in the letter but the agreement to renew lease was not done. The lease therefore expired and was not renewed.

6. In support of his case the Plaintiff relied on;

a. The lease dated 1/3/2011 – Exhibit P1.

b. Letter dated 9/2/2016 – Exhibit P2.

c. Letter dated 30/3/2016 – Exhibit P3.

d. Letter dated 25/4/2016 – Exhibit P4.

e. Letter dated 25/7/2016 – Exhibit P5.

f. Cheque dated 3/10/2016 – Exhibit P6.

g. Bank statement from the Bank of Baroda dated 16/11/2016 – Exhibit P7.

7. It is the Plaintiff contention that upon the expiry of the lease, the Defendants have failed to give vacant possession. The Defendants have also not been paying rent.

8. The Plaintiff's case is controverted. There is no doubt that the lease expired on 31/1/2016. The same was not renewed under clause 1(17) of the lease agreement, the 1st Defendant is required to give vacant possession. I find that the Plaintiff is entitled to vacant possession of the said premises.

9. The Plaintiff has relied on the case of *Kasturi Limited –versus- Nyeri Wholesalers Court of Appeal, Civil Appeal No248 of 2012*, where it was held that;

“It is the duty of the courts to ensure that no individual is prevented from taking possession and/or enjoying their property. A tenant cannot impose or force him/herself/itself on a land lord. In the instant case where the lease between the parties expired, it was incumbent upon the appellants to give vacant possession.”

10. I am wholly guided by the holding in the above case. The facts are similar as in the present suit. The right thing to do is for the 1st Defendant to give vacant possession.

11. I have considered the Plaintiffs submissions on mesne profits. At the time of the expiry of the lease, the rent was Kshs.58,564 per month. This is from April 2016. It is also the Plaintiff's submissions that the Defendants deposited Kshs390,000/= into his account without his authority and/or consent.

12. The Plaintiff is therefore entitled to Kshs58,564/= per month, for April 2016 to date.

Kshs.58,564 X 22 Months =Kshs. 1,288,408/=

Less Kshs.390,000/=

Kshs.898,408/=

13. Accordingly Judgment is entered in favour of the Plaintiff as against the Defendants as follows;

a. An order do hereby issue and is issued directing the 1st Defendant to quit and/or vacate and/or handover and/or deliver and/or give to the Plaintiff vacant possession of the suit premises situated on plot number 264/1/MN forthwith and in default to be evicted therefrom at the costs of the 2nd to 4th Defendants.

b . Kshs898,408/= being mesne profits since the termination of the lease to date and additional Kshs58,564/= per month until vacant possession is given by the 1st Defendant and/or 2nd, 3rd and 4th Defendants.

c. Costs of this suit to be borne by the 1st Defendant and/or 2nd, 3rd and 4th Defendants.

d. Interest on (b) from the date of filing this suit at court rates and on (c) from court rates until payment in full.

It is so ordered.

Dated, signed and delivered at Mombasa on the 31st day of January 2018.

L. KOMINGOI

JUDGE

31/1/2018