



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**E&L CASE NO 270 OF 2016**

PETER MURIUNGI .....1<sup>ST</sup> PLAINTIFF

KABURU LERIA..... 2<sup>ND</sup> PLAINTIFF

VERSUS

TRUSTEE REGISTERED –

CATHOLIC PARISH D.O.M LAARE.....DEFENDANT

**J U D G M E N T**

**PLAINTIFF'S CASE**

1. The Plaintiffs have pleaded that they were at all material times tenants in defendants plot No. 1474 Laare where they were carrying on the business of a car garage. They aver that on 26:11: 16, Defendants agents trespassed on the plot and damaged the customer's vehicle in an attempt to forcefully evict the Plaintiffs.

2. Plaintiffs therefore desire to have an order of permanent Injunction restraining the Defendants from evicting them from the plot.

3. During the trial, 1<sup>st</sup> Plaintiff clarified that 2<sup>nd</sup> Plaintiff is actually his customer. 2<sup>nd</sup> Plaintiff confirmed this and stated that he had known 1<sup>st</sup> Plaintiff since 2007 when he gave him a vehicle to repair. 2<sup>nd</sup> Plaintiff stated that on 26.11.16, Father Charles, (a priest) and a Mr. Mwera came with a break down and removed all the vehicles from the garage and threw them away. That is how his vehicle came to be damaged. The vehicle is alleged to be worth Sh. 610,000.

4. 1<sup>st</sup> Plaintiff told the Court that he entered the land in 2007 after using a Church man called Cyrus Kariunga to get him the space. He avers that since then he had been paying rent to the Parish Priest (Father). In his statement the mentioned figure is sh. 2500 per month, whereas in his testimony, plaintiff mentioned a figure of sh 25 000 per year.

5. Plaintiffs relied on the following documents in support of their case.

- Lease Agreement
- Demand Notice
- Reply to demand Notice.

## **6. DEFENCE CASE**

Defendant claims that it owns the Suitland No Ntima/Ntuene/1474, and that it has had any contractual and /or any type of relationship at all with the Plaintiffs.

7. Defence has also pleaded that a similar suit had been filed, by 1<sup>st</sup> Plaintiff, the same being Business Premises Rent Tribunal Case No. 62 of 2016 where the orders sought are the same.

8. DW1 who is the Chairman of the parish counsel testified that a person by the name Cyrus Kariunga is the one who had leased the land from the Parish Committee and he is the one who was paying rent. The tenancy period was running up to September, 2016.

9. When the time was up for Cyrus to leave, he left. He had been operating a garage on the suit plot.

10. In support of defence case, the following documents were produced as exhibits:

- Search Certificate for the Suitland.
- Lease agreements
- Notice to vacate.
- Reply to Advocates' Notice by Mbogo Advocates.
- Orders from tribunal.

## **11. ANALYSIS AND DETERMINATION**

It is not disputed that Defendant owns the plot No. ITHIMA/NTUENW/1474. It is also not disputed that there was a B.P.R.T. Case No. 62 OF 2016 between 1<sup>st</sup> Plaintiff and Defendants herein.

### **12. Issues for Determination**

- 1) Whether this suit is competent in light of existence of the B.P.R.T Case No. 62 OF 2016.
- 2) Whether there is any valid Tenancy Agreement between the Plaintiff and Defendant.
- 3) Whether Plaintiffs are entitled to the orders sought for in the Plaint.

### **13. The B.P.R.T Case No. 62 OF 2016**

The existence of this case is admitted. It was filed by 1<sup>st</sup> Plaintiff as against Defendant. Save for what is in the pleadings and in documents submitted by defence, none of the parties gave evidence on submitted on this issue.

14. It is quite apparent that 1<sup>st</sup> Plaintiff had approached the tribunal and obtained orders on 14:11:16 in his favour. On 14:11:16. It is thereafter that the Plaintiff filed this suit on 09:12:16. It is apparent that Plaintiff approached this Court only after the tribunal's orders which had been issued in their favour were stayed.

15. On the face of it, this suit appears similar to the tribunal case. However the Court has not been furnished with the pleadings and proceedings of the tribunal case. The parties have also not canvassed this issue during the trial. I am therefore not able to make a determination on whether this suit was filed in violation of provisions of Section 6 of the Civil Procedure Act. I will therefore proceed to determine the issues raised herein as if this is a competent suit.

**16. Is there any valid Tenancy Agreement between the Plaintiff and Defendant?**

Plaintiffs' have submitted that Defendant accepted rent from 1st Plaintiff and therefore that plaintiff was acknowledged by defendant as a Tenant. Plaintiffs hence aver that they should be treated as per the conditions stipulated in the Lease Agreement.

17. I find that the Lease Agreement availed by Plaintiff (P. Exhibit 1) is not legible. However, even if it was, I believe it would be of no relevance because 1<sup>st</sup> Plaintiff has admitted that he never entered into any lease agreement with Defendant. In his testimony, PW1 had stated that he had used a Church man called Cyrus Kariunga to get him space from the Church.

18. During Cross Examination, PW1 had stated that **"I dealt with Cyrus Kariunga...., he is the one who had rented the premises from Defendant"**.

19. From the foregoing, it is evident that there was no Written Agreement between 1<sup>st</sup> Plaintiff and Defendant yet the Churches' process of leasing out the Suitland was via a Written Agreement as is evident from the lease documents availed by both Plaintiffs and Defendant.

20. Can the tenancy relationship then be implied on account of rent payment?

21. 1<sup>ST</sup> Plaintiff has testified that he was paying rent to Father Thiga at his office and that he used to be issued with receipts. He however stated that the receipts are all written in name of Cyrus Kariungi..."

22. This is a confirmation that 1<sup>st</sup> Plaintiff was not recognized as a tenant by the Defendant. In any event, Plaintiffs have not produced even a single document to show that they were tenants of Defendant.

23. I am therefore in agreement with defence submissions that there was no valid tenancy agreement between Plaintiff and Defendant.

**24. Whether Plaintiffs are entitled to the orders sought for.**

Plaintiffs have not demonstrated that they have any rights capable of being protected in respect of the Suitland. They don't own the land and they are not tenants of Defendant. They are therefore not entitled to the prayers in the plaint.

25. In conclusion, **this suit has no merits, the same is hereby dismissed with costs to Defendant.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 26<sup>th</sup> JANUARY, 2018**

**IN THE PRESENCE OF:-**

**Court Assistant:** Janet/Galgalo

H.G Gitonga for Defendant present

Kimathi Leonard for Plaintiff present

**HON. L. N. MBUGUA**

**ELC JUDGE**