



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 135 OF 2010

PETER AKENG'O ADHOLLA (Suing as the

Personal representative of LEAH ATIENO ADHOLLA....PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

RICHARD MUREITHI GICHIMBA.....2ND DEFENDANT

JUDGEMENT

1. This dispute revolves around City Council of Nairobi Stall Number 44 which the City Council of Nairobi leased to Zephaniah Marongo Adholla in the 1960s. Zephaniah passed away in 1972 and his interest in the stall was later transferred to his wife Leah Atieno Adholla.
2. Zephaniah ran a butchery in the stall together with the 2nd Defendant under the business name of 'Economic Meat and Fish Suppliers'. Upon Zephaniah's demise, his wife changed the name of the butchery to Adholla's Meat Supplies.
3. The Plaintiff avers that she entrusted the running of the butchery to the 2nd Defendant and left him with the original stall rent card number 2105 which had been issued to her on 22/7/1986 by the 1st Defendant. Sometime in 2010 the 2nd Defendant informed the Plaintiff that the Rent Stall Card was lost only for the Plaintiff to learn later that the 2nd Defendant had transferred the Stall to his name in September, 2009.
4. The Plaintiff filed this suit seeking to restrain the Defendants from interfering with her quiet enjoyment of the stall or transferring the tenancy to any other person. The Plaintiff also sought a declaration that she is the *bona fide* tenant of the stall and holder of the Rent Card in respect of the stall. She seeks an eviction order against the 2nd Defendant as well as general and exemplary damages together with costs of the suit.
5. The 1st Defendant filed its defence on 13/4/2010 in which it denies the averments in the plaint. The 2nd Defendant filed his Amended Defence and Cross suit on 19/11/2010. The 2nd Defendant avers that he continued to maintain the butchery business on the stall upon the demise of Zephaniah Adholla in 1972 and that at no time did the Plaintiff claim ownership of the stall or contribute towards the running of the butchery business in the stall. The 2nd Defendant claimed in the cross suit that he was the lawful tenant of the 1st Defendant by virtue of Market Stall Rent Card number 5147 issued to him in September 2009 by the 1st Defendant.
6. The 2nd Defendant claims he had a mutual understanding with the Plaintiff under which the Plaintiff surrendered her rent card to him on the understanding that he would build a house for her at Umoja

Estate; which he claims to have built and from which the Plaintiff collected rent. The 2nd Defendant maintained that the Plaintiff abandoned her tenancy in the Stall and that she had breached the terms of the tenancy.

7. The 1st Defendant revoked the transfer of the Stall to the 2nd Defendant, which the 2nd Defendant maintains was illegal since no reasons were given for this action. The 2nd Defendant contends that he still holds a valid rent card over the Stall and that the 1st Defendant acted fraudulently when it purported to re-transfer the Stall to the Plaintiff. He sought a permanent injunction to restrain both the Plaintiff and the 1st Defendant from evicting him from the Stall. He also seeks a declaration that he is the legal owner of the Stall.

8. The Plaintiff died on 3/1/2012. An application for substitution was filed and allowed on 11/5/2015 when Peter Akeng'o Adholla was substituted as the Plaintiff in the suit.

9. When this matter came up for hearing on 3/5/2017, the Plaintiff's advocate informed the court that the 2nd Defendant had died and that he had not been substituted in the proceedings. The Plaintiff informed the court that he would proceed against the 1st Defendant.

10. This matter was heard on 9/11/2017. Peter Akeng'o Adholla gave evidence as the personal representative of the original Plaintiff. He adopted his witness statement dated 8/5/2017 as his evidence in the matter.

11. It was his evidence that the 2nd Defendant was a long term employee of his late father and mother. His mother left the running of the business to the 2nd Defendant when she was forced to relocate up country after being diagnosed with cancer. The 2nd Defendant was given the task of paying salaries and generally running the butchery. The original rent card was left with him to keep and present to the 1st Defendant's officers when they do their routine inspection.

12. The witness produced a copy of the rent card, the police abstract confirming the loss of the rent card; minutes of previous meetings held in an attempt to resolve the disputes between his mother and the 2nd Defendant; as well as correspondence from the 1st Defendant. He also produced copies of rates payments in respect of the stall.

13. The meetings held on 24/2/2010 and 26/2/2010 in an attempt to resolve the matter were attended by the Plaintiff, the 2nd Defendant, the representatives of the 1st Defendant as well as the representatives of City Market Trade Association.

14. The 1st Defendant's letter of 22/6/2010, requested the 2nd Defendant to return the rental card to the Plaintiff and vacate the stall failing which he would be forcefully evicted from the stall.

15. The 1st Defendant's internal confidential memo dated 9/7/2010 set out the facts relating to the unprocedural transfer of the stall. It is noted at number 7 of that memo that the Market Superintendent in charge of City Market acted negligently when he failed to consult the official tenant, that is Leah Atieno Adholla, before effecting the transfer to the 2nd Defendant. It was recommended to have the tenancy of the 2nd Defendant revoked and that of Leah Atieno Adholla reinstated, and the Market Superintendent was to be warned over his negligent actions.

16. Only the Plaintiffs testified. The 1st Defendant did not attend court when this matter came up for hearing.

17. The court is satisfied that the Plaintiff has proved on a balance of probabilities that he is the owner of Stall number 44, which was initially allocated to his father and later to his mother.

18. The court grants the orders sought in the Amended Plaintiff. The cross suit is dismissed for want of prosecution. The Plaintiff is awarded the costs of this suit against the 2nd Defendant.

Dated and delivered at Nairobi this 25th day of January 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Morara holding brief for Mr. Opiyo for the Plaintiff

Mr. Terrell holding brief for Mr. Mutisya for the 2nd Defendant

No appearance for the 1st Defendant

Mr J. Okumu- Court Assistant