



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO.24 OF 2017

THOMAS KITI NYALE.....PLAINTIFF

VERSUS

1. JOHN ROKI WAITHAKA

2. JOEL MUTARARURA KARANJA.....DEFENDANT

JUDGMENT

1. By a Plaintiff dated 31st January 2017 and filed on 3rd February 2017, the Plaintiff is seeking for judgment against the Defendants jointly and severally for:

a. A Mandatory Injunction be granted compelling the Defendants to forthwith vacant (sic) and grant vacant possession of all the premises, buildings, improvements and/or developments standing on the premises comprised in TITLE NUMBER MOMBASA/BLOCK XI/160, TUDOR.

b. Rent or mesne profits from 1st May 2016, till vacant possession is granted, as prayed in Paragraph 7 above.

c. Costs of and incidental to this suit.

d. Interest thereon (b) above at court rates from May 2016 till payment in full.

2. The Plaintiff's case is that at all material times to this suit, he is the registered owner of the land comprised in TITLE NUMBER MOMBASA/BLOCK XI/160, TUDOR together with all the buildings and/or improvements thereon. That by an instruments of lease made on 11th March, 2016 executed between the Plaintiff and the defendants, the plaintiff leased the Defendants the suit premises at an agreed monthly rent of Kshs.150,000 for a period of two years and 3 months (3)renewable, commencing on 1st April 2016 until 31st May 2018. The Plaintiff avers that pursuant to the said agreement, the defendants paid the plaintiff the sum of Kshs.450,000 being two months deposit and one (1) month rent whereupon the Defendants were let into possession of the demised premises. The Plaintiff further avers that it was part of the Lease Agreement that the Defendants would pay the monthly rent of Kshs.150,000.00 promptly on or before the 5th day of every respective month beginning the 5th day of May 2016 by way of banker's cheque in the name of the Plaintiff.

3. It is the Plaintiff's contention that in breach of the lease agreement, the Defendants failed and/or neglected to pay the monthly rent of Kshs. 150,000.00 on or before 5th May 2016 and all subsequent months. That by letter dated 11th August 2016, the Plaintiff gave three (3) months' notice to the Defendants terminating the lease agreement and further demanded for payment of the accrued rent up to 11th November 2016, which notice and demand the Defendants did not comply with. That further, by a letter dated 12th January 2017, the Plaintiff demanded from the Defendants vacant possession of the demised premises, which demand again the Defendants did not adhere to, and have continued to illegally, unlawfully and/or wrongfully possess and use the suit premises and have also invited and/or allowed other persons to use the said premises for purposes which are an annoyance and/or nuisance to the Plaintiff and have also started degrading the said property. The Plaintiff states that the Defendants have, despite the foregoing notices and demands, continued to remain in possession and occupation of the demised premises without making any payments and are grossly misusing the property thus occasioning the Plaintiff irreparable loss and damage.

4. The suit is not defended. Pursuant to leave granted by the court on 19th June 2017, the Defendants were served through advertisement in the newspaper on 13th October 2017. The Defendants did not enter appearance within the stipulated time or at all, and the case proceeded ex-parte.

5. On 19th April, 2018, the Plaintiff gave evidence in which he stated that he is a retired civil servant and now a farmer in Chonyi Division, Kilifi County. He stated that he is the registered owner of the property known as **TITLE NUMBER MOMBASA/BLOCK XI/60 IN TUDOR, MOMBASA** in which he has a three bedroom bungalow and a servant's quarter. He produced the Certificate of Title as P.exh 1.

6. The Plaintiff stated that he leased the suit property to the Defendants vide a lease agreement dated 11th March 2016 which he produced as P.exh 2. He stated further that the lease was for a period of two years 3 months at a monthly rent of Kshs. 150,000.00 payable promptly on before 5th day of every month by banker's cheque in the Plaintiff's name. He produced a bankers cheque dated 11th March 2016 for Kshs.450,000.00 as P.exh 3 which the Defendants paid as two months deposit and the rent for one month. The Plaintiff stated that the Defendants never paid any more rent and he instructed his advocates to demand for payment and issue notice of termination of the lease and produced the notices as P.exh 4 and 5. The Plaintiff further stated that the Defendants did not respond to his demand notices and continued to hold onto the suit premises until March 2017 when the Plaintiff took possession and leased it to other tenants. He produced the new lease agreement dated 10th March 2017 as P.exh 6. He prayed for payment of rent for nine (9) months that the Defendants were in possession and never paid at the rate of Kshs.150,000.00 per month, making a total of Kshs.1,350,000.00 plus costs and interest.

7. Taking the pleadings and the evidence adduced together with the submissions rendered this court is tasked to determine whether the Plaintiff has proved his case and is entitled to the reliefs sought.

8. It is not disputed that the Plaintiff leased out the suit premises to the Defendants for a period of two (2) years and three (3) months from April 2016 at the monthly rent of Kshs.150,000 per month. The Plaintiff produced the lease agreement and the bankers cheque for Kshs.450,000.00 which the Defendants paid as deposit for two months and one month's rent. The Plaintiff stated that the Defendants never made any more payment and did not give vacant possession until 10th March 2017 when the Plaintiff leased the premises to third parties.

9. The Defendants have not denied the Plaintiff's allegation. Indeed there is no evidence of payment or rent other than the initial sum of Kshs.450,000.00 paid by the Defendants at the time the parties executed the lease agreement dated 11th March 2016. The Plaintiff's evidence remains uncontroverted. From the material placed before me, I am satisfied that the Plaintiff has proved his case against the Defendants on a balance of probabilities.

10. The upshot of this, is that judgment is entered for the Plaintiff against the Defendants jointly and severally for the sum of Kshs.1,350,000.00 plus costs and interest.

Judgment dated, signed and delivered at Mombasa this 31st day of July 2018.

C. YANO

JUDGE