

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 462 OF 2013

FRANCIS KINUTHIA KIARIE.....PLAINTIFF

VERSUS

SAFARICOM LIMITED.....DEFENDANT

RULING

The plaintiff herein came to court for an order of eviction directing the defendant to immediately cause all their properties and/or equipment to be removed from a portion of all that parcel of land known as Eldoret Municipality Block 5/536 measuring Two Hundred Twenty-Five Square metres (225 m²) and deliver quiet and peaceful possession of the said premises in good order and condition to the plaintiff and an order for the payment of rent to the plaintiff by the defendant for the period it occupied and still continues to be in unlawful occupation of the portion of all that land known as Eldoret Municipality Block 5/536 measuring Two Hundred Twenty Five Square metres (225 m²) with effect from 1st of April 2013 until such time when the plaintiff shall give vacant, quiet and peaceful possession of the said premises compromised within the said parcel of land in good order and condition or as shall be ordered by the court. The plaintiff prayed for costs of the suit plus interest until payment in full.

The defendant denied the plaintiff's claim and stated that the plaintiff requested the defendant to review the lease more than 6 months before the expiry of the lease dated 10.4.2007 which request was received by the defendant on 23.5.2013 and accepted on 24.5.2013 and negotiations for chargeable annual rent continued. It was the defendant's contention that the plaintiff was not entitled to unilaterally change the terms of the agreement (lease) dated 10.4.2007 which was still binding on the parties.

Fortunately, the suit was compromised in the following terms:

- 1. The annual rent for the subject lease to be executed by the parties herein, shall be Kshs.300,000 per annum with effect from 1st April, 2013 payable once yearly in advance.***
- 2. The said annual rent shall be subject to 5% increment on an annual basis.***
- 3. That the lease period shall be 6 years with effect from 1st April, 2013.***
- 4. This matter shall be mentioned on the 18th of November, 2014 for parties to record a settlement on the other issues.***

I do find that the lease herein was between the plaintiff and the defendant over a portion of property No. Eldoret Municipality Block 5/536 owned by the plaintiff but leased by the defendant for a period of 6 years which period was to lapse on 31.3.2013. The defendant was to notify the plaintiff 6 months to the expiry of the lease of any intention to renew the lease. The plaintiff wrote to the defendant on 18.9.2012 urging the defendant to comply with the terms of the reference but the defendant did not. The lease expired but the defendant stayed put and continued paying the rent and that the plaintiff continued receiving. The defendant was given notice to give vacant possession but did not do so, however, he continued paying rent and the plaintiff continued receiving

I do agree with the plaintiff that the suit was necessitated by the action of defendant and therefore the defendant is liable to pay costs. I do award costs to the plaintiff with interest at court rates.

DATED AND DELIVERED AT ELDORET THIS 31ST DAY OF MARCH, 2017.

A. OMBWAYO

JUDGE