



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI.

E.L.C NO. 586 OF 2016

KIPKAI ENTERPRISES LTD.....PLAINTIFF

VS

MAURINE LOUISE OSEMBE.....DEFENDANT

JUDGMENT

1. The facts of this case are rather straight forward. Vide a plaint dated 31st May, 2016, the Plaintiff filed a suit against the Defendant one Maurine Louise Osembe seeking the following orders;-

- a) Payment of Rental arrears of Kshs 4,020,000.00 and further rent until such time the tenant vacates/or is evicted.
- b) An order of eviction against the defendant to vacate the suit premises.
- c) Restoration of the suit premises to its original state.
- d) Alternatively, and without prejudice to the above-mentioned costs of the restoration (to be proved at the hearing)
- e) Costs of this suit.

2. The Plaintiff states that at all material times it owned House No 6 erected on LR No. 8272/46 (Suit premises) which house was vide a lease agreement dated 1st December 2012 vested by the Plaintiff to the Defendant for a period of 3 years commencing 2012 to 30.11.2015 with an option to renew at the discretion of the landlord.

3. It is the Plaintiff's case that the defendant has failed to honour her obligations as per the lease and was in arrears totaling Ksh. 4,020,000/= as at May 2016. In addition, she also owes the Plaintiff Ksh 700,000/= being repairs that were not undertaken by the defendant despite an agreement on the same. That the Defendant did cause alterations on the house without authority of the Plaintiff thus reducing the house from 3 bedrooms to 2 bedrooms, demolished the pantry and other sections of the house through extensive and unauthorized demolitions.

4. The Plaintiff states that the Defendant did not file any memorandum of appearance nor defence despite her being served with the summons as evidenced by the affidavit of service dated 14th July 2016. The Plaintiff then applied for judgement under order 10 rule 4 of the Civil Procedure Rules 2010.

5. The matter was listed for formal proof on 22nd May 2017 and on the 25th May 2017 Ms Njagi Nyaboke Advocate testified as one of the Directors of the Plaintiff. She adopted her statement in its entirety and gave a highlight on the supporting documents in respect to the claim to wit the water and electricity bills and the cost of renovation of the house.

6. The learned counsel submitted that the case arises from a lease entered into between the Plaintiff and the Defendant dating back to 1st December 2012. It was a term of the said lease that the rent would be Ksh. 210,000/= per month. The lease was for 3 years from 2012 to 2015. That the Plaintiff agreed to set aside 70,000/= monthly to be utilized for renovation of the house for a period of 10 months, totaling 700,000/=. This amount was agreed to be withheld by the defendant and to be used for purposes of approved repairs in the house. It was a condition precedent that the approval of the Plaintiff would be obtained in writing by the Defendant before embarking on the renovations. That the drawings if any would be done by an architect.

7. That the Defendant in total breach of the terms of the lease defaulted in payment of rent perennially prompting the Plaintiff to instruct auctioneers to attach her goods to recover the outstanding rent more than once.

8. That the Plaintiff wantonly demolished the house by cutting the wall separating the kitchen from the dining; blocked the door to the dining; demolished the kitchen partly; removed electrical fittings; closed the door to the washing area; removed all the curtain boxes and rails; carried away toilet fittings and all mahogany finishes; reduced the house from 3 bedrooms to 2 bedrooms. She has attached photographs to show the state of these alterations to the house. That all these were done by the Defendant without the authority and consent of the Plaintiff and in total disregard of the terms of the lease. She has also attached a quotation from Kurstan Builders showing the detailed and itemized bill of quantities for the restoration of the house to its original state which stands at Ksh. 2,024,500/=.

9. That on 25.1.2017, the Plaintiff and the Defendant held a meeting to resolve the issue of rent arrears. The Defendant invited one Anders Ostman to assist in the mediation of the issues between the Plaintiff and the Defendant. A 6 point agreement was entered on how to resolve the rent as follows;-

a) I MKES (One million Kenya Shillings) to be paid on Monday 2017-01-23 to offset parts of the arrears.

b) Jane Nyaboke Njagi (Landlord) will discuss with her directors of Kipkai Enterprise Limited with a view to reduce the total amount of arrears (see 6 below)

c) Louise M. Khabure's (Tenant) goods in the possession of the Auctioneers will be released on Monday 2017-01-23. The tenant requests a signed letter immediately showing that the Landlord has instructed the Auctioneers to cancel the auction scheduled for 2017-01-28 and which has been advertised in the Star newspaper on 2017-01-21.

d) The remaining amount of the arrears to be repaid (after the 1 MKES has been disbursed) will be done over an extended period agreed on by the parties.

e) The receipts for the repair of KES 700,000/- given for repairs at the beginning of the lease to be produced within the next 10 days (we agree that this was discussed and agreed).

f) Point of clarification:

The total arrears of rent not honoured according to the lease agreement amounts to KES 3,419,000 (Three million four hundred nineteen thousand shillings). However, the landlord has agreed to write off KES 419,000 (Four hundred nineteen thousand shillings) so that the arrears amount to KES 3,000,000 (Three million shillings). After 1 MKES has been received by the Landlord, the remaining amount of KES 2,000,000 (Two million shillings) will be discussed with the directors of Kipkai Enterprise with a view whether or not to reduce the amount further".

10. As a result of the default the Plaintiff instructed an auctioneer to levy distress and recover the outstanding rent. The auction was scheduled for 21st January 2017 prompting the parties to explore a resolution which led to the agreement referred to above. As per the agreement the Defendant paid I million out of the outstanding rent which money is stated to have been paid by Mr. Anders Ostman leaving a balance of Kshs. 3.0 Million.

11. It would appear that the Defendant upon paying the Kshs 1.0 Million and collected her goods from the auctioneers, terminated the lease vide a letter dated 28th January, 2017 to take effect from the same date. The Defendant had vacated the premises much earlier without handing over to the Plaintiff as per the lease agreement. The Plaintiff in its submissions abandoned its order for eviction prayed in the Plaint as the same had been overtaken by events, the defendant having vacated the residential house prior to the termination of the tenancy.

12. I have carefully considered the submissions, copious email and ordinary correspondences between the Plaintiff and the Defendant and I find that the tenancy relationship was one which was tumultuous. The Plaintiff has demonstrated on record that the Defendant was a defaulter from the beginning in relation to the existing tenancy. She appeared to have experienced difficulties in meeting her rent obligations as they fell due. This she attributed to her nature of her income; which came from her consultancy work which she was paid irregularly. She however communicated the difficulty to the landlord and that may have been the reason why the Plaintiff accommodated her for a while.

13. It is not in dispute that the lease agreement between the Plaintiff and Defendant existed. It is also not being disputed that the rent arrears are outstanding. The Plaintiff and Defendant attempted to resolve the dispute as late as January 2017 when the case was ready in Court.

14. From the materials presented before Court the total amount pleaded and proved by the Plaintiff is as follows;-

(a) Rent outstanding	-	2,210,000/=
(b) Cost of restoration of the house to its original state	-	2,024,500/=
(c) Electricity	-	135,000/=
(b) Water bill	-	6,000/=

The Plaintiff had submitted an outstanding rent figure of Kshs 3 million however it is on record that the Defendant paid Kshs 1 million leaving a balance of Ksh. 2 million. Kshs 419,000/= had been written off by the Plaintiff. I find that the Plaintiff is entitled to 2 million together with rent January 2017 Kshs 210,000/- making it a total of Kshs 2,210,000/=. As regards the claim from redecoration, this claim arose from the reduced rent from 210,000/= to 140,000, setting aside 70,000/= for repairs. The Defendant claims to have done the repairs albeit without authority of the Plaintiff but failed to account for the said repairs in form of receipts. I find that the Plaintiff is entitled to this claim of Kshs 700,000/-. I find and hold that the plaintiff is entitled to Kshs 2, 024,500/- being renovations costs as itemized in the bills of quantities presented in Court.

15. For the above reasons, I find and hold that the Plaintiff has proved its claim on a balance of probability and hereby enter judgment in its favour in the sum of Kshs. 5,075,500/=

16. The costs of this suit shall be paid by the Defendant.

SIGNED DATED AND DELIVERED THIS 22ND SEPTEMBER 2017 IN NAIROBI.

J.G. KEMEI

JUDGE