



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KERUGOYA
E.L.C CASE NO. 153 OF 2015
KIRINYAGA WOOD TREATMENT LTD.....PLAINTIFF
VERSUS
GEOFFREY NG'ANG'A KARIUKI T/A INTERTROPICAL
TIMBER TRADING LIMITED.....DEFENDANT
JUDGMENT

The plaintiff (as landlord) entered into a tenancy agreement with the defendant (as tenant) on 1st March 2013 whereby the plaintiff leased to the defendant for a term of two (2) years premises known as **KIRINYAGA/GATHIGIRIRI/202** in Kirinyaga County for a rental sum of Ksh. 450,000 per month payable on a monthly basis before the 5th day of each month. By a supplementary tenancy agreement dated 29th September 2014, the tenancy agreement was renewed for a term of three (3) years with effect from 1st March 2014 and the rent was revised at Ksh. 600,000 payable monthly before the 5th of each month. It is the plaintiff's case that the defendant has been a habitual defaulter in payment of rent and observance of contractual obligation and so on 31st August 2015 the plaintiff issued a termination notice which took effect on 1st November 2015 and the defendant is therefore a trespasser on the plaintiff's property and owes rent arrears inclusive of interest totaling Ksh. 6,511,524.95 together with mesne profits as may accrue after 1st November 2015 at the rate of Ksh. 600,000 per month. The termination notice has not been challenged and although the defendant had instituted **TRIBUNAL CASE No. 680 of 2015** against the plaintiff, it was withdrawn and there are no other proceedings pending.

The plaintiff therefore filed this suit seeking judgment against the defendant in the following terms:

- a) ***Ksh. 6,511,524.95 on account of rent arrears upto 31st October 2015.***
- b) ***Ksh. 600,000 per month after 1st November 2015 as mesne profits.***
- c) ***A declaration to the effect that the defendant is a trespasser on the plaintiff's property being KIRINYAGA/GATHIGIRIRI/202.***
- d) ***An order for eviction of the defendant from the property KIRINYAGA/GATHIGIRIRI/202 and the Officer Commanding Wanguru Police Station to ensure compliance and supervise the eviction for purposes of order and peace.***

The defendant while admitting that a landlord/tenancy relationship existed between the parties nonetheless denied having been served with a notice as required or that he owes the plaintiff any arrears

in rent. The defendant also pleaded that the suit is fatally defective and he would take up a point of law at the first instance.

On 30th March 2017, the suit was confirmed ready for trial and fixed for hearing on 11th July 2017. However, on the hearing date, neither the defendant nor his counsel attended the Court though duly served with a hearing notice.

The plaintiff testified through its Managing Director **SAMUEL WAIGANJO THUO** who confirmed that on 1st March 2013, the plaintiff as the registered proprietor of the suit property entered into a tenancy agreement with the defendant who was to lease it at a rent of Ksh. 60,000 per month. The defendant has however been a habitual defaulter in paying rent and so the lease was terminated and a sum of Ksh. 6,511,524.95 is owed to the plaintiff as rent as well as other sums as pleaded in the plaint. He also asked the Court to rely on the other documents filed together with the plaint. Counsel for the plaintiff **MR. ORENGE** filed written submissions at the end of the trial.

I have considered the plaintiff's evidence oral and documentary, as well as the submissions by counsel.

The defendant did not attend the hearing and therefore the plaintiff's evidence is un-controverted save for a defence which was not prosecuted. The defence confirms that indeed a landlord/tenancy relationship existed between the parties but denies that a termination notice was issued.

Among the documents filed by the plaintiff in support of its case is a termination notice dated 31st August 2015 informing the defendant of the plaintiff's desire to terminate the tenancy with effect from 1st November 2015. Other than that, there are letters addressed to the defendant and dated 26th January 2015, 4th May 2015 and 13th July 2015 notifying the defendant that he is in arrears of rent and action would be taken to recover the same. Indeed there is also a proclamation notice dated 19th May 2015 issued by Quickline Auctioneers for recovery of outstanding rent. It is clear therefore that the defendant has been a habitual defaulter in payment of rent and no evidence has been placed before me to indicate that the termination notice was challenged and with what results. The plaintiff's evidence remains un-controverted and in the circumstances, believing the plaintiff as I do, I am satisfied that it is entitled to judgment as prayed in the plaint for arrears of rent of Ksh. 6,511,524.95 as at 31st October 2015.

On account of mesne profits, it is the plaintiff's evidence, again un-controverted, that the defendant is still trespassing in the suit property notwithstanding the notice dated 31st August 2015. A claim for mesne profits at Ksh. 600,000 per month from 1st November 2015 is therefore well merited and I allow it. The moment the notice period specified in the notice dated 31st August 2015 lapsed, the landlord/tenant relationship between the parties came to an end and the defendant is clearly trespassing on the suit property and the order seeking his eviction therefrom is equally merited and I grant it. However, I do not see the need to issue any order directing the Officer Commanding **WANGURU POLICE STATION** supervise the defendant's eviction as sought. The role of the Police is set out in **Section 24 of the National Police Service Act** and includes the responsibility to maintain law and order and they do not need any order from this Court to do so. Where there is a likelihood of break-down of law and order, any party is at liberty to seek the assistance of the Police. **Section 24 (a) and (b) of the National Police Service Act** is relevant and states that the role of the Police includes:

a) Provision of assistance to the public when in need.

b) Maintenance of law and order.

It would not be the proper role of the Police to be involved in the execution of civil process as there are provisions in the civil law providing how such processes should be executed. But that is not to say that their assistance cannot be sought by any party to maintain law and order.

Ultimately therefore and having considered the plaintiff's evidence, un-controverted as it is, I am satisfied that it has established its case against the defendant as required in law. Judgment is therefore entered for the plaintiff against the defendant in the following terms:

1. Ksh. 6,511,524.95 on account of rent arrears upto 31st October 2015.

2. Ksh. 600,000 per month after 1st November 2015 as mesne profits.

3. A declaration to the effect that the defendant is a trespasser on the plaintiff's property being KIRINYAGA/GATHIGIRIRI/202.

4. An order for the eviction of the defendant from land parcel No. KIRINYAGA/GATHIGIRIRI/202.

5. Costs and interest.

B.N. OLAO

JUDGE

6TH OCTOBER, 2017

Judgment delivered, dated and signed at Kerugoya this 6th day of October 2017

Mr. Munene for Mr. Orengo for Plaintiff present

Mr. Njau for the Defendant absent

Right of appeal explained.

B.N. OLAO

JUDGE

6TH OCTOBER, 2017