



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 68 OF 2014**

**FORMERLY HCCC NO 219 OF 2012**

**PHYLIS NJOKI MWAURA .....PLAINTIFF**

**VERSUS**

**MARY WANJIRU NYAMBURA .....DEFENDANT**

**JUDGMENT**

***(Suit for possession of premises; defendant not paying rent and having been given notice to vacate; no defence filed; plaintiff's case uncontested; judgment entered for plaintiff for accrued rent and for vacant possession).***

1. This suit was commenced by way of plaint filed on 21 June 2012. The plaintiff is the proprietor of the Commercial Plot L.R No. 533/479 situated within Molo Town which property is developed, whereas the defendant has been a tenant in one of the units in the development. The plaintiff's case as pleaded is that the defendant has refused to pay rent, from June 2007 to 1st November 2011. It is pleaded that on 3rd August 2011, the plaintiff sent to the defendant a notice to terminate the tenancy which was to take effect on 1st November 2011. Despite the notice, the defendant continued to occupy the premises hence this suit for eviction. The plaintiff also sought the principal sum of Kshs. 130,000/= being rent from July 2007 to November 2011, and mesne profits at Kshs. 2, 500/= per month until the defendant vacates the premises.

2. The defendant never entered appearance nor filed defence within the stipulated period and judgment in default was entered. The matter was then listed for formal proof on 8 July 2015. On the day, the defendant appeared in court and pleaded with the court to allow her file a defence, on the basis that she had never been served with summons but only the hearing date. I was not convinced that the defendant has not been served with summons, for the affidavit of service was fairly elaborate, but nevertheless I allowed her some time to file defence, but this was never done. Neither did she show up at the subsequent hearing date.

3. The matter therefore proceeded ex-parte with the plaintiff and one witness giving evidence. The evidence shows that the defendant was a tenant in the plaintiff's premises. She initially used the premises as a hair salon but later converted it for residential use. Her rent was Kshs. 2,500/=. From July 2007 she has never paid rent. Since the tenancy is controlled, a notice to terminate was issued to her, but she never filed any reference at the Rent Premises Tribunal. The plaintiff now wants her evicted from the premises and to be paid rent for the period that the defendant has been in occupation of the premises.

4. The plaintiff's case is unchallenged and I have no reason to doubt it. The plaintiff has produced a title

deed to show that she owns the premises. She has also produced the notice to terminate tenancy filed at the Rent Premises Tribunal, which notice, shows that the tenancy was being terminated for failure to pay rent.

5. I therefore enter judgment for the plaintiff for the principal sum of Kshs. 130,000/= being rent due prior to the filing of this case, and thereafter mesne profits at the rate of Kshs. 2, 500/= per month, from the date of filing suit to the time that the defendant is evicted. The above sums to attract interest at court rates from the date of filing suit. I further order the defendant to give vacant possession of the premises within 14 days of service of this judgment, or decree, and in default, the plaintiff be at liberty to apply for an order of eviction.

6. The plaintiff shall also have costs of this case.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17th July 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of:-**

Mr G K Mbiyu of M/s Mutonyi, Mbiyu & Co Advocates for plaintiff.

N/A for defendant who has not entered appearance.

Janet : Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**