



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 86 OF 2015

RICHARD KIPKEMBOI KUTTO.....PLAINTIFF

VERSUS

NICODEMUS KOECH.....DEFENDANT

RULING

Richard Kipkemboi Kutto (*hereinafter referred to as the plaintiff*) has brought this suit against **Nicodemus Koech** (*hereinafter referred to as the defendant*). The plaintiff claims that he is the registered owner of that entire premise known as ELDORET MUNICIPALITY BLOCK 5/712 measuring 0.0866 hectares having acquired the Certificate of Lease on 20.9.2011. By an oral agreement dated 2nd April, 2012, the plaintiff agreed to sell to the defendant the premises known as ELDORET MUNICIPALITY BLOCK 5/712 situated at West Indies, Eldoret, at the price of Kshs.22 million. The sale was to be completed on 2nd October, 2012.

The plaintiff further aver that the defendant breached the said oral agreement by failing to pay the purchase price of Kshs.22 million and further forced himself and occupied the said premises known as ELDORET MUNICIPALITY BLOCK 5/712.

The plaintiff further avers that upon breach by the defendant of the said oral agreement for sale, the plaintiff and the defendant entered into a new oral agreement in the month of October, 2012 for lease of the premises herein to the defendant at a monthly rent pay of Kshs.90,000/=.

The plaintiff aver that the defendant breached the said oral agreement for lease of the premises herein by failing to pay the said monthly rent of Kshs.90,000/= but continued to occupy the subject premises herein. The plaintiff further aver that he now desires to take occupation of his premises and have the same sold to willing third parties who are now ready and willing to purchase the same at the current market price.

Notwithstanding, repeated requests by the plaintiff and the plaintiff's advocates by letter dated 31st March, 2014 and 11th June, 2014 the defendant has refused and continues to refuse to take any steps towards vacating the said premises. The defendant has now resulted to using threats and destabilizing the plaintiff's quiet enjoyment of his premises known as ELDORET MUNICIPALITY BLOCK 5/72.

By reason of the said breaches of the oral agreement dated 2nd April, 2012 and the oral agreement for lease for the month of October, 2012 and of the wrongful acts complained of, the plaintiff has suffered damage, and has been greatly injured in his reversion.

The plaintiff aver that unless the court intervenes, there is likely to be a breach of peace and quiet enjoyment of the plaintiff's property as the respondent has evinced an intention not to vacate the plaintiff's property unless forced to do so and to that end it is necessary that the local police station be mandated to

observe compliance of law and order.

The plaintiff prays for judgment against the defendant for an order of eviction and an injunction order restraining the defendant, his servants, workmen and agents, from entering on and/or in any way interfering with the plaintiff's use and enjoyment of the plaintiff's said property known as **Eldoret Municipality Block 5/712**. He further prays for damages for breach of the said oral agreements and a declaration that the plaintiff is entitled to a lien on the money that may have been paid to him by the defendant for unpaid rent, damages suffered and costs and mesne profits of the said premises from 2nd October, 2012, till possession is delivered up to the plaintiff. Last, but not least, he prays for costs and interest of this suit.

The defendant on his part denies the contents of paragraph 4 of the plaint and avers that he entered into an oral agreement with the plaintiff where the plaintiff sold the suit premises known as Eldoret Municipality Block 5/712 at an agreed purchase price of Kenya Shillings Thirteen Million Only (13,000,000/=).

The defendant avers that there has never been another oral agreement between the defendant and the plaintiff save for the fact that the said property as at the month of October, 2012 the main house was rented to another tenant who was paying rent to the plaintiff and that there has never been an oral agreement where the property was leased to him by the plaintiff for Kshs.90,000/= per month and puts the plaintiff to strict proof thereof. He denies the contents of paragraph 10 of the plaint and avers that it was the plaintiff who breached the oral agreement for Kshs.13,000,000/= by not procuring the title deed from the bank despite the defendant paying the plaintiff a sum of Kshs.9,050,000/=.

On the 29.4.2015, the defendant filed a preliminary objection that the court has no jurisdiction to hear and determine this matter as the plaintiff claims is of tenant-landlord relationship and should be determined by the Rent Tribunal and therefore the suit should be struck out with costs.

The **gravamen** of the defendants' submissions on the preliminary objection is that the plaintiff's matter can be resolved by the Rent Tribunal. He refers the section 5(1) (f) of the Rent restriction act Cap 296 Laws. Before the court construes the provisions of Section 5 (1) of the Rent Restriction Act, it should first of all construe the provisions of Section 2 of the said Act which provides that...

(1) This Act shall apply to all dwelling-houses, other than-

(a) excepted dwelling-houses;

(b) dwelling-house let on service tenancies;

(c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.

(2) Where a dwelling-house is let on a composite tenancy each dwelling-house in the composite tenancy shall be treated for the purposes of this Act as though it were let on a separate tenancy.

The plaintiff argues that the defendant has failed to read section 2(1) (c) of the Act which provides that the Act applies to dwelling houses other than dwelling houses which have a standard rent exceeding two thousand five hundred shillings per month furnished or unfurnished.

I agree with the plaintiff's submissions that the Tribunal's jurisdiction is limited to dwelling houses whose standard rent does not exceed two thousand five hundred shillings per month furnished or unfurnished.

The court finds that the defendant has failed to demonstrate that the suit premises is a dwelling house whose standard rent does not exceed 2,500 shillings therefore the preliminary objection is misconceived. The same is dismissed with costs to the plaintiff.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF OCTOBER, 2015.

ANTONY OMBWAYO

JUDGE