



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO 966 OF 2012

Formerly HCC 194 of 2012

JOHN ZEDEKIAH MAKWATAPLAINTIFF

VS

ISAAC OCHEBO AMKEDEFENDANT

JUDGEMENT

This suit was instituted by way of plaint filed on 24 September 2012. In this suit, it is the claim of the plaintiff that he entered into a written lease agreement with the defendant over the land described as Pioneer/Ngeria Block 1 (EATEC) / 7683 which lease was for a period of 3 1/2 years from 1st July 2011 to 31st December 2014, at an agreed consideration which increased with the years. From 1st July to 31st December 2011, the rent was agreed at Kshs. 20,000/= per month; from 1st January 2012 to 31st June 2012, the rent was agreed at Kshs.20,000/= per month; from 1st July 2012 to 31st December 2012, the rent was agreed at Kshs.25,000/= per month; from 1st January 2013 to 31st December 2013 Kshs, 25,000/= per month; and from January 2014 to December 2014, Kshs. 25,000/= per month. It is the case of the plaintiff that the defendant failed to pay the rent from January 2012. The plaintiff has pleaded that when the defendant failed to pay rent, he exercised his right to terminate the lease and did send a notice of termination on 16 April 2012. It is pleaded that despite the plaintiff terminating the lease, the defendant continued with default and refused to vacate the premises. It is further averred that the plaintiff has failed to pay water and electricity bills. The plaintiff thus sought orders to have the lease declared as terminated; that the defendant be declared trespasser; that the defendant do pay all rent arrears; eviction and costs and interest.

The defendant despite being served with summons failed to enter appearance nor file defence. The suit was thereafter set down for hearing. The defendant was again served with a hearing notice but failed to attend. The matter therefore proceeded ex-parte with the plaintiff being the sole witness.

The plaintiff testified that he is the registered owner of the land parcel Pioneer/Ngeria Block 1 (EATEC) / 7683 measuring about 1 acre. He testified that he entered into a lease agreement with the defendant dated 27 May 2011 which lease was for a period of 3 1/2 years. The lease agreement was produced as an exhibit. He further testified that the defendant defaulted in paying rent as from January 2012. The plaintiff then engaged his lawyers to demand the rent in default of which the lease would be terminated. The letter was duly written on 16 April 2012. The plaintiff stated that the defendant then responded through a letter promising to pay but failed to do so. It is then that he opted to file this suit while the defendant was still in occupation. In October 2012 after the suit was filed, the defendant vacated the premises. The plaintiff testified that his claim for rent is now for the period from January 2012 to October 2012. He further stated that from October 2012 to December 2012 there was no tenant and he thus asked for general damages. He also stated that the defendant vacated the premises without paying electricity and water bills which the

plaintiff was forced to pay. He thus sought orders to have the same refunded.

I have considered the evidence which is uncontroverted. The claim of the plaintiff is based on a contract of lease which was produced in evidence. The term of the lease is from 1st July 2011 to 31st December 2014. The rent payable is similar to what I set out in the first paragraph of this judgement. There is a termination clause which provides for a three months notice. As to utility bills, the obligation to pay was that of the lessee.

The evidence of the plaintiff is not challenged and I have no reason to doubt the same. He has testified that the defendant failed to pay rent from January 2012 which forced him to terminate the lease through the letter of 14 April 2012. The defendant thus ought to have vacated three months later which is August 2012 but failed to do so and he thus filed suit in September 2012. The defendant however vacated the premises in October 2012 apparently after being served with the summons herein. In his plaint the plaintiff has claimed rent arrears due at the time of filing suit to the time of determination of the suit.

Now that the defendant vacated the premises in October 2012, I think that the plaintiff is only entitled to claim rent for the period that the defendant continued to remain in occupation, and thereafter for a further three months, which would be the period of notice. The plaintiff is thus entitled to rent arrears from January to October 2012. The rent for January to June 2012 was Kshs. 20,000/= per month and from July to December 2012 was agreed at Kshs. 25,000/= per month. In total the rent arrears from January 2012 to October 2012 is therefore Kshs. 220,000/=. I will also grant the plaintiff 3 months rent being rent in lieu of notice which is a total of Kshs. 75,000/=.

Although in his evidence the plaintiff claimed entitlement to general damages, there is no pleading for general damages, and in any event, no damages were suffered by the plaintiff, for he got a tenant in January 2013. I am not therefore inclined to award any general damages to the plaintiff. As to the order of eviction, the defendant already vacated the premises and the order for eviction is now spent. The plaintiff also sought payment of electricity and water bills which he said that he paid owing to the default of the defendant. However, no such bills were produced in evidence. I cannot therefore tell the amount being claimed and am unable to make the award. I however declare the lease agreement dated 27 May 2011 as terminated and award the plaintiff costs and interest of this suit.

I therefore issue the following final orders :-

- (a) I issue a declaration that the lease agreement dated 27 May 2011 is terminated.
- (b) I order the defendant to pay rent arrears from January 2012 to October 2012 in total Kshs. 220,000/=.
- (c) I order the defendant to pay three months rent in lieu of notice which is Kshs. 75,000/= in total.
- (d) I award the plaintiff costs and interest of this suit.

It is so decreed.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF SEPTEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. E.M. Makuto holding brief for Mr. Kiboi for the plaintiff.

Defendant never entered appearance - absent.