



**Abdalla v Oyugi (Environment & Land Case E055 of 2023)  
[2024] KEELC 6141 (KLR) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6141 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E055 OF 2023  
NA MATHEKA, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**FARIDUN SULEIMAN ABDALLA ..... PLAINTIFF**

**AND**

**MARGARET ACHIENG OYUGI ..... DEFENDANT**

**JUDGMENT**

1. By an amended plaint dated 12<sup>th</sup> February 2024 the plaintiff pleads that he is the registered owner of all that parcel of land known as C.R 16166/11 situated at Nyali hereafter known as suit property and that pursuant to an agreement to lease, the defendant took possession of the same on 1<sup>st</sup> May 2023 and subsequently on 4<sup>th</sup> May 2023 paid 2 months deposit of Kshs. 440,000 as well as another deposit of Kshs. 15,000 for electricity and a further deposit of Kshs. 15,000 for water. When a draft lease was forwarded to the defendant for her proposed amendments he discovered that the defendant was using the suit property for air bnb to third parties and upon rescinding the agreement the defendant refused to move out. Further that the Defendant's actions are a contravention of the agreement to lease as the purpose of the lease was for residential purposes only. Consequently, the defendant vacated the suit property on 13<sup>th</sup> November 2023 leaving the suit property in a state of despair with missing items as well as rent arrears. The plaintiff therefore prays for the following:
  - i. A declaration that the actions of the Defendant are in contravention of the lease agreement contemplated between the parties.
  - ii. A liquidated sum of Kshs. 2,368,548 plus interests thereon at commercial rates.
  - iii. Costs of and incidental to this suit.

SUBPARA iv.

Any other order or relief at the Court's discretion.



2. Despite entering appearance on 20<sup>th</sup> June 2023, the defendant never filed pleadings nor participated in the suit. The court therefore will rely on the pleadings and submissions filed by the plaintiff on 2<sup>nd</sup> July 2024 and the issues the court has found for determination is whether the amended plaint has merit?
3. In *Gichinga Kibutha v Caroline Nduku* [2018] eKLR the Court held that;

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
4. Similarly, in *Kirugi and Another v Kabiya & 3 others* [1987] KLR 347 the Court of Appeal held that;

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
5. The plaintiff testified that they had an agreement for lease with the defendant for a monthly rent of Kshs. 220,000 subject to execution of the lease and the purposes would be residential only. However, the said lease was never executed despite the defendant paying Kshs. 440,000 deposit for two months as well as deposit for water and electricity at Kshs. 15,000 each.
6. Be that as it may, pursuant to an agreement to this lease between the parties herein, the Defendant took possession of the suit premises on the 1<sup>st</sup> May 2023. sometime in or about the 13<sup>th</sup> of November 2023, the Defendant without Notice to the Plaintiff vacated the suit premises, leaving behind the house in unknown state of despair with missing items. I find that the plaintiff incurred losses when the defendant left the suit property in a state of disrepair as was proved by the photographs in the list of documents dated 12<sup>th</sup> February 2024.
7. Regarding proof of loss, while it is true that that it is trite law that special damages must not only be specifically pleaded but also strictly proved, what amounts to strict proof must depend on the circumstances that is to say, the character of the acts producing damage, and the circumstances under which those acts were done. See *Nizar Virani T/A Kisumu Beach Resort v Phoenix of East Africa Assurance Company Limited* Civil Appeal No. 88 of 2002 [2004] 2 KLR 269, *Gulhamid Mohamedali Jivanji v Sanyo Electrical Company Limited* Civil Appeal No. 225 of 2001 [2003] KLR 425; [2003] 1 EA 98, *Coast Bus Service Ltd v Sisco E. Murunga Ndanyi & 2 Others* Civil Appeal No. 192 of 1992.
8. It was therefore held by the Court of Appeal in *Jackson K Kiptoo v The Hon Attorney General* [2009] KLR 657 that;

“The court is conscious that the degree of certainty and particularity of proof required depends on the circumstances and the nature of acts complained of.”
9. Similarly, in *Hahn v Singh, Civil Appeal No. 42 of 1983* (185) KLR 716, the Court of Appeal held as follows;

“Special damages must not only be specifically claimed (pleaded) but also strictly proved... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”



10. The Plaintiff specifically pleaded and itemized the rent owed from July 2023 to 13<sup>th</sup> November 2023 which is still outstanding. The renovation works by Laben Enterprises Limited were set out and the plaintiff also produced a further water utility bill and the power utility bill as at November 2023. The power generator quotation of Kshs. 502,000 was also given. The Defendant offered no evidence as to why she vacated the premises without notifying the plaintiff and while this case was pending in court. She has offered no evidence to dispute the special damages which have been specifically proved by way of documentation. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. Special damages of Kshs. 2,368,548/= plus interest thereon at court rates.
2. Costs of this suit to be paid by the Defendant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**N.A. MATHEKA**

**JUDGE**

