



**Mbeya v Muturi (Environment & Land Case E404 of 2022)
[2024] KEELC 7384 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E404 OF 2022
MD MWANGI, J
OCTOBER 29, 2024**

BETWEEN

JACOB RAJAB MBEYA PLAINTIFF

AND

CHRISTINE NYAMBURA MUTURI DEFENDANT

JUDGMENT

Background

1. The Plaintiff's claim against the Defendant as pleaded in the amended plaint dated 1st March 2023 is that he and his wife are the joint registered owners of L.R No. Nairobi Block 112/59 (hereinafter referred to as 'the suit property'). The Plaintiff avers that they have developed on suit property an eight (8) bedroomed, all ensuite house and a two (2) bedroomed guest house, a garage and a guard house.
2. Sometimes in the month of February 2022, the Plaintiff and the Defendant entered into a lease agreement over the suit property which was duly executed by both parties. The lease was for the period 11th May 2022 to 31st May 2023. Further extension of the lease, if at all, was to be initiated by the Defendant who was the lessee, by the issuance of a two (2) months' notice of intention to renew the lease, and subject to the mutual agreement of both parties. The rent was Kshs. 500,000/- payable monthly in advance at the beginning of each month. The Defendant was however, to maintain a deposit of Kshs. 1,000,000/- refundable at the termination of the lease. It was agreed that the deposit could be utilized to defray any outstanding conservancy, renovation, and redecoration charges/ expenses. It was nevertheless expressly agreed that the deposit could not be used to defray any rent due and or payable.
3. The Plaintiff further pleaded that it was agreed between him and the Defendant that neither party could terminate the lease within the first 12 months after it took effect. Should any party opt to do so, he or she was to indemnify the other by paying the rent equivalent to the unexpired period of the lease. However, after the expiration of the lease (after the first 12 months), either party could terminate



it by giving the other a two-months' notice in writing or paying two months' rent equivalent in lieu of notice.

4. The Plaintiff accuses the Defendant of default in the performance of the terms of the lease agreement between them. He asserts that on or about 6th September 2022, the Defendant vide a whatsapp message notified him of her intention to prematurely terminate the lease. She stated that she would be moving out of the suit property at the end of the month of September 2022. She therefore demanded a refund of the deposit paid at the commencement of the lease.
5. The Plaintiff asserts that the Defendant's action aforesaid, violated the express provisions of the lease. The Plaintiff therefore responded to the Defendant informing her that he interpreted her message to be tantamount to a notice to terminate the lease, and as such, he would allow her the requisite 2 months' notice which was to lapse on 6th November 2022. The Plaintiff claims that the Defendant in spite of that stuck to her position insisting that she would vacate at the end of September 2022.
6. The Plaintiff affirms that the Defendant did not after all vacate the suit property as indicated in her notice. She continued to demand the refund of her deposit but remained in the suit property. She refused to pay any further rent due in accordance with the lease agreement hence falling into arrears for the months of November and December 2022. She proceeded to vacate the suit property on the 31st December 2022 without paying the rent arrears owing for the months of November and December 2022.
7. The Plaintiff pleads that the action of the Defendant of vacating the suit property without notice and proper handover denied him the opportunity to inspect the state of the suit property at the time of her vacation. He later learnt that the Defendant left the suit property in a deplorable condition. The Plaintiff alleges that he incurred a sum of Kshs. 484,573/- in restoring the suit property as tabulated at paragraph 35 of his amended plaint.
8. The Plaintiff prays for judgement against the Defendant for:-
 - a. Damages for breach of contract of Kshs. 4,000,000/- equivalent of 8 months' rent being the unexpired period the lease upon termination by the Defendant within the first 12 months of the lease.
 - b. Rent arrears for the months of November and December 2022.
 - c. Costs of the repairs undertaken on the suit premises.
 - d. Costs of this suit,
 - e. Any other reliefs that this Honorable court may deem fit and just to grant.

Response by the Defendant

9. In her statement of Defence and Counterclaim dated 26th April 2023, the Defendant denied the Plaintiff's claim and allegations in the amended plaint in their entirety. She affirmed that the lease agreement with the Plaintiff was for a residential premise on plot No. 59 along Pan-Afric Avenue, within Runda Estate, entered into on or about the 1st June 2022.
10. The Defendant asserts that she did not have the opportunity to view the house before the commencement of the lease. The wife of the Plaintiff had instead shared with her the photographs of the suit property which she relied on. She moved into the house on or around the 26th May 2022 and the lease commenced on 1st June 2022. She states that there were things like sinks, fountains and swimming pool in the house that were incomplete and which the Plaintiff had promised to fix in the



first 6 months of commencement of the lease. Prior to her entering into the house, it had been used for purposes of acting.

11. The Defendant states that the Plaintiff neglected, failed and ignored to carry out the maintenance and repairs as promised and despite numerous reminders. The Defendant therefore resolved to undertake some repairs on her own to make the house and the compound habitable. She alleges that she made repairs in the kitchen, the guest house, bedrooms, fountain, compound and the swimming pool amongst other areas. In spite of the repairs, the house developed molds due to water seepage through the walls and dampness causing a health hazard to the Defendant and her family.
12. The Defendant insists that the Plaintiff completely ignored and neglected to perform his duties as per the lease agreement making the suit property uninhabitable and unfit for residential purposes. It was what forced the Defendant, on 6th September 2022 to demand a full refund of the deposit paid to the Plaintiff for breach of the lease agreement. In response, the Plaintiff replied to the Defendant's demand terming her letter of 6th September 2022 as amounting to a termination of the lease.
13. The Defendant further asserts that the Plaintiff without her knowledge and or information placed the suit property on sale thereby terminating the lease agreement on his own.
14. Regarding the claim for rent for the months of November and December 2022, the Defendant asserts that she paid the Plaintiff a sum of Kshs. 110,000/- being the remainder of the rent for the month of November 2022 after deducting Kshs. 390,000/-, the amount she had allegedly expended on repairs. For December 2022, the Defendant asserts that she incurred extra costs totaling Kshs. 210,000/- on purchase of water after the Plaintiff instructed the Runda Water Company to disconnect water services to the suit property.
15. The Defendant counter-claims against the Plaintiff for breach of the lease agreement through non-performance of his obligations therein including terminating the lease within the first 12 months and failure to indemnify the Defendant with the rent equivalent to the unexpired period of 12 months being Kshs. 4,000,000/-. She counter-claims for a sum of Kshs. 4,600,000/- as tabulated in her statement of Defence and Counter-claim. She further claims general damages, costs of the suit and interest on the special damages, general damages and costs at commercial rates.
16. The Plaintiff in reply to the Defendant's statement of Defence and Counterclaim reiterated the contents of his plaint and prayed for the dismissal of the Counterclaim.
17. The case proceeded to full hearing with each party testifying in his/her own case. The parties affirmed their pleadings through their respective testimonies.

Court's Directions

18. At the close of the hearing, the court directed parties to file written submissions. The Plaintiff complied and filed his submissions dated 7th May, 2024. The Defendant did not file submissions. I have had the opportunity to read the Plaintiff's submissions on record.

Issues for Determination

19. Having considered the pleadings filed by the parties in this case, the oral and documentary evidence adduced at the hearing and the submissions by the Plaintiffs, I am of the considered view that the issues for determination in this case are;
 - a. whether the lease agreement, the subject matter of the lease between the Plaintiff and the Defendant was a valid, legal and binding contract;



- b. whether the Plaintiff has proved his case against the Defendant;
- c. whether the Defendant has proved her counterclaim against the Plaintiff; and
- d. based on the findings in (b) and (c) above, what orders should issue.

Analysis and Determination

A. Whether the lease agreement, the subject matter of the lease between the Plaintiff and the Defendant was a valid, legal and binding contract

20. The tenancy relationship between the Plaintiff and the Defendant was premised on the lease agreement which both parties acknowledge, signed on 14th February 2022 by the lessee and on 13th February 2022 by the lessor. The existence and validity of the lease agreement is not in issue in this case.
21. The lease was for a period of one year commencing 11 May 2022 and ending on 31st May 2023. Further extension of lease was subject to the mutual agreement of the parties but was to be initiated by the lessee who was required to issue at least a two months' notice before expiration of the lease communicating her intentions to renew the lease.
22. There is no dispute that the lease did not run its full course. The parties counter-accuse each other for the breach of the lease agreement.
23. Having found that there is no dispute as to the existence and validity of the lease and further having confirmed that the lease was duly executed and attested, it was a valid legal contract between the parties. The court must then proceed conscious of the hallowed legal maxim as pronounced by the Court of Appeal in the case of Pius Kimayo Langat -vs- Co-operative Bank of Kenya Ltd (2017) eKLR, which cited with approval the decision in National Bank of Kenya Ltd – vs- Pipe Plastic Samkolit (IK) Ltd (2002) 2 EA 563, to the effect that is not the business of the courts to rewrite contracts between parties. The parties are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved. The Court of Appeal opined that the primary task of a court is to construe the contract and any terms implied in it.
24. In the case of Fina Bank Ltd – vs- Spares & Industries Ltd as cited in the case of National Bank of Kenya Ltd Pipe plastic Samkolit Ltd (supra), the court (Shah JA) had categorically stated that,

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain.”
25. Having considered the evidence adduced before the court and further considering the pleadings filed therein, more so the Counter-claim by the Defendant, I may as well borrow from the Court of Appeal in the above-cited case and say that there was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the lease agreement, the subject matter of this suit.
26. Having said as much, I find and hold that the lease agreement signed between the Plaintiff and the Defendant was a legally binding contract.

B. Whether the Plaintiff has proved his case against the Defendant and whether the Defendant has proved her counter-claim against the Plaintiff

27. I will handle the two issues together.



28. The lease agreement at its introduction on the first page was explicit that it was for the ‘residential premises on plot No. 59 along Pan afric Avenue, Runda Estate, Nairobi, Kenya (comprising one eight-bedroom, eight-bathroom, main house, residential building of ground, plus one two-bedroomed guest house, garage for two vehicles and one self-contained guardhouse together with all rights and appurtenances, fixtures and fittings, the property erected on approximately half-acre land, all in full repair, working and leasable condition, which the lessee shall hold and enjoy during the continuance of the lease subject to terms and conditions mentioned hereinafter’ (emphasis added).
29. The Defendant therefore, at the time of signing the lease agreement confirmed that the suit premises was in full repair, working and in leasable condition. It is therefore preposterous for her to turn around and allege that she had not had the opportunity to view the house before the commencement of the lease. If she did not, then she has only herself to blame. She willfully executed the lease agreement, confirming that it was in full repair and leasable condition thereby agreeing to be bound by the terms therein.
30. One such term in the lease agreement was that the termination of the lease before the end of the first 12 months was not available to either party. Again in her own pleadings the Plaintiff alleged that the Plaintiff had promised to fix the places that required repair in the first 6 months of commencement of the lease. However, her notice of 6th September 2022 demanding a full refund of the deposit paid to the Plaintiff for alleged breach of the lease agreement was way before the expiry of the 6 months. It is therefore the Defendant who breached the lease agreement, the subject matter of this suit.
31. The consequence of her action of terminating the lease before expiry of the first 12 months was that she became liable to pay the Plaintiff the rent equivalent to the unexpired period of the lease which was five months, i.e. Kshs. 2,500,000 @ 500,000/- per month. The lease was to run up to 31st May 2023 whereas she vacated on 30th December 2022.
32. The Plaintiff’s further claims from the Defendant rent for the months of November and December 2022. This makes up a sum of Kshs. 1,000,000/-.
33. Though the Plaintiff claimed the costs of repair undertaken after the Defendant vacated the suite premises, the same was not specifically proved as required by law. In the case of *Hahn vs. Singh, Civil Appeal No. 42 of 1983* [185] KLR 716, the Court of Appeal held that;

“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.
34. I therefore disallow the Plaintiff’s claim for the costs of repair allegedly undertaken after the Defendant vacated the suit premises
35. The Defendant being the one in breach of the terms of the lease is not entitled to claim for breach of the same lease against the Defendant. Her counter-claim fails.
36. The Defendant too has not strictly proved the alleged expenses incurred while at the suit premises. Her counter-claim is hereby dismissed entirely.
37. The upshot is that the Plaintiff’s claim against the Defendant succeeds. The Plaintiff is awarded an aggregate sum of Kshs. 3,500,000 made up of the five months’ rent equivalent (Kshs. 2,500,000/-) and the rent for the month of November and December 2022 (Kshs.1,000,000/-). Since the Plaintiff retained the rent deposit of Kshs. 1,000,000/-, the same shall be discounted against the award of Kenya



shillings 3,500,000 making it Kshs. 2,500,000/- which shall attract interest at court rates from the date of filing suit until payment in full. The Plaintiff shall also have the costs of the suit.

38. The Defendant's Counterclaim against the Plaintiff is dismissed with costs to the Plaintiff.
39. I must add that the costs awarded in this case (in respect to the Plaintiff's suit and the Defendant's counter-claim) shall be assessed on the scale applicable to suits filed in the Magistrates' courts. The subject matter of this suit was well within the pecuniary jurisdiction of the Magistrates' courts.

It is so ordered.

JUDGEMENT DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF OCTOBER 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

N/A by the parties

Court Assistant: Yvette

M.D. MWANGI

JUDGE

