Grandways Venture Limited v Jomo Kenyatta University of Agriculture and Technology (Civil Appeal E027 of 2023) [2025] KEHC 1269 (KLR) (28 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1269 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITALE

CIVIL APPEAL E027 OF 2023

AC MRIMA, J

FEBRUARY 28, 2025

BETWEEN

GRANDWAYS VENTURE LIMITED ..... APPELLANT

AND

JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY ..... RESPONDENT

(Being an appeal from the judgment and decree of Hon. S.K Mutai (SPM) in Kitale Chief Magistrates Civil Case No. E158 of 2021 delivered on 24th April 2023)

JUDGMENT

Background:

1. By way of a Plaint dated 16th April 2021, Grandways Ventures Limited, the Appellant herein, sought to recover mesne profits of Kshs. 4,377,211/=, water charges of Kshs. 2,632/=, withholding tax of Kshs. 524,158/= and Kshs.6,000/= as repair charges, from Jomo Kenyatta University of Agriculture and Technology (JKUAT), the Respondent herein. That was in Kitale Chief Magistrates Civil Case No. E158 of 2021 [hereinafter referred to as 'the civil suit'].

2. The Appellant pleaded that the Respondent was its tenant pursuant to a letter of offer, a lease agreement and an addendum to the lease, executed between them in respect of the space comprising, Kitale Municipality Block 7/14 measuring 49140 square feet on the second floor in the building known as Mega Centre in Kitale town.

3. It was further pleaded that, upon expiry of the lease, the Respondent breached the terms and conditions by failing to reinstate the premises to the condition they found it in and by occupying it outside the lease period thus denying it income and profit.

4. It is on the foregoing basis that the Appellant claimed mesne profits and other charges.

5. The Respondent denied the claim through its defence dated 3rd June 2021. It stated that it served the appropriate notice and even vacated the premises 6 days before the expiry of the lease term. It pleaded that upon an inspection by the Appellant, it commenced restoration and renovation works in accordance with its specifications. The Respondent, therefore, affirmed that it fully complied with the Appellant's requirements and surrendered vacant possession before expiry of the lease term.

6. Upon considering the evidence, the trial Court found that the Appellant delayed the quotation for its renovation specifications leading to the delay in handing over the premises. Therefore, the Appellant's claim for mesne profits could not stand and the civil suit was dismissed with costs.

The Appeal:

7. Dissatisfied with the trial Court's findings, the Appellant preferred an appeal and urged for entry of judgment in its favour on the following grounds: -

    1. The learned magistrate erred in fact by finding that the Plaintiff had an obligation to provide a quotation of the premises; which he did not.

    2. The learned magistrate erred in fact by finding that the defendant did not have an obligation to reinstate the premises a month before the determination of the lease; contrary to the lease agreement.

    3. The learned magistrate erred in fact by ignoring the fact that the Respondent did not request for how to perform their obligation to reinstate in spite of knowing that the lease was determining by 30th November 2019.

    4. The learned magistrate erred in fact by stating that the handover was complete on 10th January 2020 despite the respondent still holding keys; which they handed over on the 6th February 2020.

    5. The learned trial magistrate erred in law by stating that mesne profits only arise where the respondent was gaining by holding the premises.

The Appellant's submissions:

8. In its submission dated 26th September 2023, the Appellant asserted that according to the lease agreement, the Respondent had the obligation to commence renovations one month prior to determination of the lease and had no duty to make quotation under the lease. The Appellant further claimed that the trial Court erred by finding that the Respondent did not have an obligation to restore premises contrary to the provisions of the contract and that it knew the condition the premises ought to have been left in, as espoused by clause (l), without necessarily being told by the Appellant.

9. It was its case that the Respondent handed over the keys to the premises on 6th February 2020 and it was erroneous for the trial court to find that that the hand over was on 10th January 2020. It claimed that it had an obligation to be paid mesne profits accrued since it could not rent out the premises or interfere with the renovation works going on until the keys were handed over.

10. The Appellant submitted that the appeal be allowed with costs and the judgment be entered as prayed for in the civil suit.

The Respondent's case:

11. Jomo Kenyatta University of Agriculture and Technology challenged the appeal through written submissions dated 5th December 2023. In its assessment, the only issue for determination was whether the Appellant claim for mesne profits was proved on a balance of probability.

12. It was its case that in order to succeed in a claim for mesne profits, the Appellant had to establish by way of evidence that the Respondent was in possession of the premises after the expiration of the lease. To that end, it referred the Court to Section 2 of the *Civil Procedure Act* and the decision of the Court of Appeal in the case of Attorney General -vs- Hala Meat Products Limited (2016) eKLR.

13. It was also submitted that since the renovations, including the coat of paints, could only be done under the direction of the Appellant, the Respondent legitimately expected to receive quotation from the Appellant before commencing repair works. As a result of the delay in getting the quotation from the Appellant, it was the Respondent's case that it barred it from claiming compensation. The Respondent cited the authority of Westminster Commercial Auctioneer -vs- Diamond Trust Kenya Limited (2021) eKLR to buttress the claim that the Appellant could not be allowed to benefit from its own wrong doing.

14. The case of Macharia Mwangi Maina & 87 Others -vs- Davidson Mwangi Kagiri (2014) eKLR was further relied on to assert the maxim that equity shall suffer no wrong without a remedy. In the end, the Respondent prayed that the appeal be dismissed with costs.

Analysis:

15. From the consideration of the record, the pleadings and the parties' written submissions, only one issue arises for determination and is whether the trial Court erred in disallowing the Appellant's claim.

16. This Court's role, as a first appellate Court, was well articulated in Susan Munyi -vs- Keshar Shiani [2013] eKLR, where the Court of Appeal observed that a first appellate is duty bound to objectively re-assess the evidence presented before the trial Court afresh. The Court observed: -

> ... As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.

17. The above was reiterated in Abok James Odera t/a AJ Odera & Associates -vs- John Patrick Machira t/a Machira & Co Advocates [2013] eKLR among many other decisions.

18. Speaking to the advantage the trial Court has in observing the witnesses and the need for the appellate Court to exercise restraint while differing with the findings of fact, the Court of Appeal of East Africa in the case of Peters -vs- Sunday Post Limited (1958) E.A 424, observed as follows: -

> .... It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has the advantage of seeing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whenever the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.

19. With the foregoing, I now turn to the process of reassessing the evidence in a bid to answer the sole issue in this appeal.

20. Suku Elisha was the sole Appellant's witness. It was his case that the Respondent took over the premises on 14th February 2014 and handed it over on 6th February, a period of 2 months and 1 week after the expiry of the lease and that all along the Respondent had the keys to the premises.

21. On cross-examination, he stated that the Respondent served the Appellant with a notice to vacate on 17th October 2019 upon notifying them that they would not renew the lease. He stated that he could not confirm whether the Respondent had moved out of the premises by 30th November 2019. It was his evidence that there was a joint inspection of the premises on 10th January 2020 which revealed that work had not been done perfectly and in line with the quotation given on 10th December 2019, not on 16th December 2019. He conceded that the Respondent was not using the premises in December 2019 and in January 2020.

22. Dr. Abednego Gwaya testified on behalf the Respondent. He stated that the lease agreement was to expire on 30th November 2019 and that on 17th October 2019, they communicated to the Appellant that the were not renewing it.

23. He further stated that the Respondent vacated the premises on 24th November 2019 and that according to clause l, the Appellant was supposed to give them a quotation on renovations. It was his case that the Appellant was free to enter I to the premises and serve the Respondent with a quotation for renovations. That, the Appellant's representative gave the Respondent its quotation on 10th December 2019 when the Respondent's representative visited the Appellant.

24. Dr. Gwaya stated further that the Respondent began the renovations and on 16th December 2020, the Appellant issued a different quotation. Determined to undertake the works, the Respondent finished the renovations and handed over the premises on 10th January 2020. It was his evidence that all the parties signed the handover report and peacefully parted ways.

25. On being cross-examined, Dr. Gwaya stated that the Respondent never requested for quotations on renovations in their notice to vacate as that was the duty of the Appellant to generate such a quotation once the Respondent left the premises. He reiterated that the Respondent was served with two quotations and that it repaired the premises to its original state and that they had the keys up to 10th January 2020.

26. The above evidence is what the trial Court relied on in rendering the impugned judgment.

27. The resolution of this appeal primarily turns on how the terms of lease agreement pit against the evidence. In doing that assessment, this Court will be guided by the principle of contract interpretation which requires that the meaning of the contents of a document is derived from the four corners of the document itself and no other source.

28. In Civil Appeal No. 61 of 2013, Fidelity Commercial Bank Limited -vs- Kenya Grange Vehicle Industries Limited (2017) eKLR, the Court of Appeal cited with approval its own decision in Civil Appeal No. 23 of 2005, Prudential Assurance Company of Kenya Limited -vs- Sukhwender Singh Jutney and Another and spoke to the concept of fidelity to the terms of a contract as follows:

> .... So that where the intention of parties has in fact been reduced to writing, under the so-called parole evidence rule, it is generally not permissible to adduce extrinsic evidence, whether oral or written, either to show the intention, or to contradict, vary or add to the terms of the document, including implied terms. Courts adopt the objective theory

> of contract interpretation, and profess to have the overriding aim of giving effect to the expressed intentions of the parties when construing a contract. This is what sometimes is called the principle of four corners of an instrument, which insists that a document's meaning should be derived from the document itself, without reference to anything outside of the document (extrinsic evidence), such as the circumstances surrounding its writing or the history of the party or parties signing it. (emphasis added).

29. In the Prudential Assurance Company of Kenya Limited case [supra], the parole evidence rule was discussed in the following manner: -

> ... It is a familiar rule of law that no parole evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument. The rule applies as well to deeds as to contracts in writing. Although the rule is expressed to relate to parole evidence, it does in fact apply to all forms of extrinsic evidence.

30. With the foregoing, I now turn to the contents of the lease document. According to Clause 1(e)(i) and (ii), the Respondent was required to pay to the appropriate water authority any sums chargeable in respect of the water consumed and to reimburse the Appellant all water charges in respect of water consumed. The obligation upon the Respondent to keep the interior of the premises in good state of repair and condition as they were at the commencement of the lease period was derived in clause 1(i) and (j).

31. Regarding the obligation to renovate the premises for purposes of termination of the lease, Clause 1(l) is relevant. It provides as follows: -

> At the end of every second year and in the month before the determination of the said term (whenever determined) well and sufficiently to clean off if necessary and paint with as many coats of plastic emulsion or other paint.....the lessor may in its uncontrolled discretion determine all the inside parts of the premises previously or usually painted and at the same time to wash distemper all such parts of the interior of the premises previously or usually washed or distempered or whitewashed and to clean off re-sand and polish or recoat with polythene wood seal all polished wood (if any) in a properly and workman like manner.

32. For purposes of this dispute, paragraphs 3 and 4 of the Respondent's letter dated 17th October 2019 are relevant. It made known its intention to exit the premises in the following terms: -

> The term of lease as stipulated in the said agreement was six (6) years from 1st December 2013. The said six years term comes to an end on 30th November 2019.
>
> In light of the above, the University wishes to notify you of its intention to exit ..... upon expiration of the term of lease on 30th November 2019.

33. In accordance to Clause 1(l) of the lease agreement, the Respondent gave the Appellant the requisite one month's notice. Further, the Respondent indicated in its letter that it would arrange to settle any outstanding arrears and expect its deposit held refunded once it restored the premises to its original state.

34. In response to the notice of intention to terminate tenancy, the Appellant, did a quotation titled "reinstatement cost for below mentioned civil and repair works". It was dated 10th December 2019. It was done 10 days after the expiry of the tenancy. Whereas the Respondent complied with the lease terms a issued a termination notice in consonance with clause 1(j), the Appellant introduced the renovation requirements on 10th December 2019 well outside the lease term.

35. It is on record that the Respondent issued a notice of its intention not to renew the lease on 17th October 2019. The lease was lapsing on 30th November 2019. That was a period of over 40 days prior to the expiry of the lease. There seems to be no clause in the agreement speaking to the timelines within which renovations ought to be commenced and completed. The lease only speaks to 'the month before determination of the said term'. It would appear, considering the wording of the lease, that all the renovations were envisioned to be done and completed in the timeframe of one month, but within the lease period. In this case, the Appellant having been notified way before the lapse of the lease, did not raise the issue of the renovations. The Respondent peacefully served the notice period and vacated. The Respondent was then served with a letter requesting that some renovations be done 16 days after it exited the premises on 24th November 2019; which was a period of around 6 days before the lapse of the lease.

36. There is a good reason as to why renovations must be within the lease period. It offers an opportunity for the parties to agree on the nature and extent of the renovations and to avoid instances where a lessor springs up with alleged renovations well after the lessee exits the premises. Having been served with over 40 days' notice period to vacate the premises, the Appellant was to immediately notify the Respondent of any renovation works to be undertaken. Had the notice of the renovations been given within one month before the expiry of the lease, as required under the lease, the Respondent would have been under a legal duty to undertaken such works within the lease period. That would, therefore, mean that if the Respondent would have failed to carry out the said works within the lease period then it would be liable to pay mense profits for the period outside the lease. However, that was not the case in this matter. It was the Appellant who issued the renovation demand long after the lease had expired and the Respondent had left the premises.

37. Be that as it may, and in any event, the Respondent still undertook the renovations within one month of the notice that was from 10th December 2019 to 10th January 2020. There is absolutely nothing on record to suggest that the Respondent would not have been able to carry out the renovations within the lease period had it been timeously notified. There is further no evidence that the Appellant was wrongfully denied its premises. As such, the claim for mense profits cannot stand. In the words of the Court of Appeal in Attorney General -vs- Halal Meat Products Limited [2016] eKLR: -

> .... It follows therefore that where a person is wrongfully deprived of his property, he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another.

38. To this Court, the Appellant's claim for mense profits is, hence, unfounded and unsubstantiated. As said, there is no evidence that the Respondent is to shoulder any such liability. If the Appellant alleged delay, then it failed to lay a sound evidential basis on the issue as to accord liability on the Respondent. If anything, it is the Appellant who is out to steal a match from the Respondent since it was liable to refund the deposit under the agreement. The Appellant's conduct is, no doubt, an affront to the constitutional maxim of equity that requires whomsoever that seeks equity must do so with clean hands.

39. Buttressing the foregoing, suffice to note that taking cue from the Court of Appeal decision in Fidelity Commercial Bank Limited -vs- Kenya Grange Vehicle Industries Limited case [supra], there is no doubt the Appellant created its own extrinsic terms and sought to impose them upon the Respondent. The claim is, hence, unsustainable.

40. Regarding water charges and repair costs, there is no doubt that at the time of the inspection and handing over of the renovated premises on 10th January 2020, there were invoices that some water

and repair costs were pending settlement. The invoices were produced as evidence. Further, the Respondent does not contest the monies owing to that end. The claim, therefore, succeeds.

41. In the end, the appeal party succeeds.

Disposition:

42. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.

43. Consequently, the following final orders hereby issue: -

    a. The Appellant's claim for mesne profits of Kshs. 4,377,211/- is without merit and is hereby dismissed.

    b. The Appellant's claim for water charges of Kshs. 2,632/- and repair charges of Kshs. 6,000/- are hereby granted.

    c. Each party to bear their own costs in the appeal.

44. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

No appearance for Mr. R. Odhiambo, Learned Counsel for the Appellant.

Miss. Kitur, Learned Counsel for the Respondent.

Duke – Court Assistant.