



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 598 OF 1993

CLEMENT ODONGO AWANGE 1ST PLAINTIFF

HACOM PRINTERS & SUPPLIERS LTD 2ND PLAINTIFF

SYPROSA AKINYI 3RD PLAINTIFF

VERSUS

MISS MARGARET ODHIAMBO 1ST DEFENDANT

GALAXY AUCTIONEERS 2ND DEFENDANT

JUDGEMENT

By an amended plaint filed in court on 20th May, 1993, the 3 plaintiffs namely: Clement Odongo Awange, Hacom Printers and Suppliers Ltd and Syprosa Akinyi, sued the two defendants jointly and severally seeking an injunction order to restrain the defendants from selling a motor vehicle which had been detained by the defendants after a distress for rent which the plaintiffs said was illegal, and therefore by this suit, sought the return of the said motor vehicle.

The plaintiffs also sought exemplary damages for trespass, illegal distress, assault and malicious damage to property to be quantified.

Finally, the plaintiffs sought a Declaration that the distress in each case was illegal as there was no valid rent increase by Kshs.6000/= and that the agreed rent remained Kshs.6,500/= p.m since June, 1992.

The 2nd defendant denied the claims and asked the court to dismiss the plaintiffs case with costs.

The 1st defendant's first defence was dated 1st June 1993 in which she denied all the claims by the plaintiffs and asked the court to dismiss their case with costs. After the plaint was amended, the 1st defendant also amended her defence. Her amended defence is dated 21st April, 1996. It was filed in

court on 29th April, 1997. The amended defence had a “**SET OFF AND COUNTERCLAIM**”, where the 1st defendant gave particulars of “**loss and damage**”, to the tune of Kshs.864,220/=.

The court records shows that this amended defence was served on the plaintiff’s Counsel. No reply to the amended defence was filed, and by a request for judgement dated 16th June, 1997, the 1st defendant requested for an interlocutory judgement for Kshs.864,220/= general and exemplary damages and costs and interest of the counterclaim.

On 23.6.97, the Principal Deputy Registrar Mr. Njai entered interlocutory judgement in favour of the 1st defendant, but against the plaintiffs, who had failed to file a reply to the counterclaim within the specified period. Interlocutory Judgement was entered for kshs.864,200/=.

The plaintiff thereafter took a date for the formal proof. The date was served on the Counsel for the plaintiff, M/s Arum & Co. Advocates on 11th December, 2000.

On the day of the hearing of the formal proof, which was 20th December, 2000 neither the plaintiffs nor their lawyer appeared in court, though service had been effected.

The 1st defendant appeared and gave evidence on oath on her counterclaim. She stated that she filed a counterclaim as a result of the suit filed against her, and she denied all the claims in the plaint and amended plaint, which allegations have not been proved. The defendant stated that as a result of the failure by the plaintiffs to vacate the suit premises in Southlands Estate, Langata she suffered loss and damages as shown in paragraph 8 of her defence under “**SET OFF & COUNTERCLAIM**”.

The defendant lamented that the plaintiffs had not paid her rent for the period 1992 – 1996 at the rate of Kshs.8,500 p.m. That as a result of this, she was forced to stay with friends who charged her Kshs.15,000/= p.m. Thereafter, she had to move to the Embassy Hotel, where she paid rent. That when the plaintiffs moved out finally she incurred money in the repairs of the suit premises. She prayed for compensation as per her pleadings in court.

As was rightly stated by the plaintiff in the counterclaim, the claims in the plaint or amended plaint were not proved against her. Instead interlocutory judgement was entered against the plaintiffs on her counterclaim.

The 1st defendant gave evidence to back her claim. I am satisfied that she proved her counterclaim on a balance of probabilities and I find judgement for her against the plaintiffs jointly and severally in the sum of Kshs.864,220/= plus costs and interest at court rates.

Having found judgement for the 1st defendant, I proceed to dismiss the amended plaint with costs to the 1st defendant.

Secondly I direct that interest on the sum of Kshs.864,220/= be calculated from the date the amended defence of the 1st defendant was filed – i.e. on 29th April, 1997, till payment in full.

Finally I have not awarded exemplary damages because this was not proved at the hearing.

Dated at Nairobi this 29th day of December, 2000.

JOYCE ALU OCH

PUISNE JUDGE



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