



Case Number:	Civil Appeal 25 of 1987
Date Delivered:	27 Jun 1988
Case Class:	Civil
Court:	Court of Appeal at Kisumu
Case Action:	Judgment
Judge:	Joseph Raymond Otieno Masime, John Mwangi Gachuhi, Fred Kwasi Apaloo
Citation:	Owuor v Kenya Medical Research Institute, Malaria and Other Protozoal Diseases Research Center [1988] eKLR
Advocates:	-
Case Summary:	<p>Owuor v Kenya Medical Research Institute, Malaria and Other Protozoal Diseases Research Center</p> <p>Court of Appeal, at Kisumu</p> <p>June 27, 1988</p> <p>Gachuhi, Apaloo & Masime JJA</p> <p>Civil Appeal No 25 of 1987</p> <p>(Appeal from a judgment and decree of the High Court at Kisumu, Butler-Sloss J)</p> <p><i>Landlord and Tenant</i> – tenancy – determination of tenancy – whether landlord can refuse to accept possession because tenant breached the covenant to do repairs.</p> <p>The issue on this appeal was on the appellant's/landlord's refusal to accept possession of the premises on the determination of the tenancy for the reason that the tenant had committed a breach of the covenant to repair.</p>

	<p>Held:</p> <p>1. As a matter of law, on the determination of a tenancy, a landlord cannot refuse to accept possession of the premises for the reason that the tenant committed a breach of the covenant to repair. The tenant only incurs an obligation to repair.</p> <p>2. In this case, such repairs as there were had been done by the tenant and the only compensation that the landlord could receive would be mesne profits for any period that the tenant could be shown to have held over.</p> <p>3. No special damages were proved and no general damages were proved beyond the cost of repairs which the tenant had met.</p> <p><i>Appeal dismissed.</i></p>
Court Division:	Civil
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal dismissed.
History County:	Kisumu
Representation By Advocates:	Neither party represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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IN THE COURT OF APPEAL

AT KISUMU

(Coram: Gachuhi, Apaloo & Masime JJA)

CIVIL APPEAL NO 25 OF 1987

BETWEEN

OWUOR.....APPELLANT

AND

**KENYA MEDICAL RESEARCH INSTITUTE, MALARIA AND
OTHER PROTOZOAL DISEASES RESEARCH CENTERRESPONDENT**

JUDGMENT

(Appeal from a judgment and decree of the High Court at Kisumu, Butler-Sloss J)

June 27, 1988, **Gachuhi, Apaloo & Masime JJA** delivered the following Judgment.

The short point of this appeal, is whether the learned judge was right in holding, as a matter of law, that on the determination of a tenancy, a landlord cannot refuse to accept possession of the premises because the tenant committed a breach of the covenant to repair. The landlord seems to have thought that he could do so.

We are satisfied that as a matter of law, the landlord could not refuse. Indeed, counsel for the appellant now concedes that he could not do so. So the legal position in this case is that the tenant only incurs an obligation to repair. It is now conceded that such repairs as there was, was done by the tenant and so the landlord did not expend any funds of his own for this purpose.

So the only compensation that the landlord could receive would be mesne profits for any period the tenant could be shown to have held over. That was shown to be a period of one month – that is up to April 30, 1983. The learned judge awarded mesne profits – the equivalent of one month's rent for this.

In our opinion, there is no legal liability on the respondent to pay any damages beyond this. In his memorandum of appeal, the appellant invites us to reverse the judgment and award him damages on the various heads claimed in the plaint.

We are satisfied those claims were based on a mistaken view of the law. In our opinion, not only was any special damages alleged not proved, nor has any general damages been proved beyond the cost of repairs which the tenant has met.

That being so, no good grounds exist for disturbing the judgment appealed from. We think this appeal fails and ought to be and is dismissed with costs.

Date and delivered at Kisumu this 27th day of June , 1988

J.M GACHUHI

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JUDGE OF APPEAL

F.K APALOO

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JUDGE OF APPEAL

J.R.O MASIME

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR



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