REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 360 of 2002

HANNAH WANJIKU T/A GUTHERA PROVISION STORE ……...…… APPELLANT

VERSUS

JOWELL T. KAMANO …….....…….. RESPONDENT

JUDGMENT

On June 29th, 2001 the Respondent-Landlord gave a notice under Section 4 (2) of Cap 301 to his tenant the Appellant for termination of tenancy on grounds that he wanted to occupy the premises to operate a hardware business. The Appellant opposed the notice and filed a reference to the Business Rent Tribunal. The learned Chairman found for the landlord.

Aggrieved by the decision of the Learned Chairman, G K Mwaura, in B.P.R.T. 219 of 2001 dated 8th July, 2002 the Appellant-tenant filed this appeal based on the following grounds of appeal:

That the learned Chairman erred in law in terminating tenancy:

1. When the ground cited and evidence available and circumstances obtaining did not so justify;

2. On a "pretended" and unattainable ground;

3. On unsubstantiated reasoning;

4. On a ground not known in law;

5. Under circumstances that would otherwise militate him to give effect to the objective tenor and aspirations of the Act (Cap 301 Laws of Kenya).

Ms Thangei, Counsel for the Appellant, submitted that the Landlord had not shown good faith that he intended to carry out a business on the said premises, and that his intention was not genuine for the following reasons;

(i) that he had given similar notices to other tenants, and upon recovery of premises he had not set up his own business;

(ii) he has other business premises from which to conduct his hardware business;

(iii) he has litigation going on with other tenants;

(iv) the appellant had been a good tenant for 50 years having invested Kshs.3 million in the business.

She cited the case of ***Auto Engineering vs Gonella (1978) KLR 248*** arguing that the onus was on the landlord to show that he had a firm and settled intention to occupy the premises for his own business.

Ms Thangei finally argued that the notice to terminate tenancy was defective because it did not comply with Section 7 (1) (g) of Cap 301 in that the notice did not say that the business was "to be carried on by him". This omission, she argued, was fatal.

Ms Kiguatha, Counsel for the Respondent/landlord, submitted that the premises from other tenants were obtained when their leases expired in accordance with the law; that the landlord had shown a firm and settled intention to occupy the suit premises for his own business of hardware; that these premises were most suitable for that purpose; and that he had the required funds for the same.

Finally, she argued that the omission of the words "to be carried on by him" in the Notice was not fatal (See: ***Abeid vs Badbes (1968) EA 598)***.

Having heard witnesses, and having observed their demeanour, and having considered the written submissions filed by Counsel, the Chairman of the Tribunal delivered himself as follows on the facts:

"**I have carefully considered all the evidence in the matter. It is clear that the landlord has the ability to start a hardware business at the premises. He says that he has decided to start the business at the premises. Also he has the financial means to do so. Physical ability is also not a problem to the landlord. The main issue is whether the professed intention is genuine. The tenants distruct of the landlord arises from the fact that in the recent past, the landlord has taken back premises that were vacated by previous tenants…. In my view, there is nothing wrong when the landlord enforces his contractual rights or enforces his landlord statutory rights and I don't make any adverse inference due to these actions."**

In arriving at the above finding, the Chairman took into account the landlord's evidence that he wanted to set up his own hardware shop to advance his business of property development; that the location, size, and the layout of the premises, including his need for the mezzanine floor, made the premises ideally suited for his purpose; that the alternatives available to him were not suitable, and that he had the required funds to carry out the intended purpose.

Those facts showed, in my opinion, that the landlord Respondent had "a firm and settled intention" to use the premises for his own business (See ***Auto Engineering vs Gonella***). The Chairman was satisfied that the landlord had discharged the burden of demonstrating that he had a genuine intention of occupying the suit premises for his own business. I have no reason to interfere with that decision.

Finally, I agree with Ms Kiguatha that the omission of the words "to be carried on by him" in the Notice to Terminate was not fatal. The Notice contained all the ingredients required under the Act; it was clear; the tenant knew exactly why his tenancy was being terminated; and had full opportunity to defend himself in respect of that Notice. Both the cases of ***Abeid vs Badbes and Auto Engineering (supra)*** support the argument that not every word stated in the statute need to be repeated in the notice, as long as the language used is adequate to convey to the tenant what the landlord intends to do and why he wants vacant possession.

Accordingly, and for reasons outlined, I dismiss this appeal with costs to the Respondent.

Dated and delivered at Nairobi this 16th day of November, 2004.

ALNASHIR VISRAM

JUDGE