



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO. 244 OF 2007

MULTI INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF MOMBASA.....DEFENDANT

JUDGMENT

(Suit by plaintiff seeking to have the defendant restrained from claiming land rates; defendant having advertised that the plaintiff is in default of land rates as at the year 2007 and threatening to repossess or interfere with the suit land; evidence adduced showing that the plaintiff was up to date as at the year 2007; no evidence to challenge the plaintiff's documentation filed by defendant; obvious that plaintiff was not in any rates arrears and the defendant's demand for the same erroneous; judgment entered for the plaintiff declaring that it had no rates arrears as at the year 2007)

1. This suit was commenced through a plaint which was filed on 11 October 2007 originally against the Municipal Council of Mombasa. The complaint was that through a newspaper advertisement of 23 August 2007, the Municipal Council of Mombasa advertised the plaintiff's name as a rates defaulter and demanded rates of Kshs. 2,480,073.56/= on the property Plot No. 91/XX/Mombasa (the suit property), yet the plaintiff was not in any rent arrears. Due to the alleged owed rates, the Municipal Council of Mombasa had threatened to repossess the property or collect rent from the tenants to defray the said rates. In the suit, the plaintiff asked for orders to have the defendant permanently restrained from dealing with the suit land together with costs and interest of the suit. A defence was filed where it was admitted that there was a demand for the rates.

2. There was an amendment to the plaint effected on 23 November 2016. The only amendment was to replace the Municipal Council of Mombasa with the County Government of Mombasa. The original defence was also amended to only reflect the change in the name of the defendant.

3. The matter lay idle for a considerable amount of time but eventually proceeded before me on 7 June 2021 when the plaintiff called its accountant, one Zulfikarali Tajabali Abdulahi, as its witness. He testified that the plaintiff was not in any rates arrears and referred to documents indicating that all rates have been paid. His evidence was that rates have been paid even after the year 2007 despite the defendant yet again threatening to take over and sell the suit property because of rates arrears. As at the year 2021, the defendant was claiming rates of Kshs. 164,129,142/= which the witness stated cannot be owing, as all payments for rates are up to date.

4. The defendant did not call any witness.

5. Counsel were invited to file written submissions but only counsel for the plaintiff did so. I have considered the submissions before arriving at my decision.

6. The plaintiff's case is simple. That it had paid its rates as at the year 2007 and did not owe the defendant anything at that time. The defendant appears to still claim arrears of rates to date but the position of the plaintiff is that this cannot be a valid claim as they are paid up to date. The plaintiff may very well have a point, because from the documentation that it has provided, it seems that it is up to date with its rates payments. However, I will have to restrict myself to the period up to the year 2007 for that is what is before me. It is trite that parties are tied to their pleadings. If the plaintiff had wished for this court to make orders regarding rates beyond the year 2007, it needed to amend the pleadings, but the pleadings were not amended. All I will therefore consider is whether as at 2007, when this case was filed, the plaintiff had any rates arrears and whether the demand for rates was justified.

7. I have gone through the documentation provided. The plaintiff could not have had any arrears of land rates as at the year 2007. The land rates manifest availed to the plaintiff by the defendant, dated 10 February 2005, shows nil balance for the year 2005. In the year 2006, the plaintiff paid the rates of Kshs. 236,950/= through receipt number 000004197 dated 8 February 2006. On 2 January 2007, the plaintiff paid a similar amount to clear the rates for that year and was issued with a receipt number 000016904. It follows that if there was a nil balance as at

the year 2005, and payments were made for the rates for the years 2006 and 2007, there was nothing that the defendant's predecessor would be claiming as rates or penalty or interest. The books were clean and all the records should have reflected that. It was wrong for the defendant to ask for any accumulated rates or penalties or interest as there was nothing in the context of land rates that the plaintiff owed the defendant as at the year 2007. It was thus erroneous for the defendant's predecessor to advertise the name of the plaintiff as a rates defaulter. The plaintiff fully deserved to come to court to have the defendant stopped from demanding any rates as at the year 2007.

8. The plaintiff's case thus succeeds. I need however to reiterate that this judgment is restricted to the period up to the year 2007 for that is what is in the pleadings. I issue a declaration that as at the end of the year 2007, the plaintiff did not owe any rates, or any arrears of rates, or any penalties, or any interest arising from any default in payment of rates and the defendant is hereby permanently restrained from making any demand for rates, rates arrears, interest, or penalties over rates up to the year 2007.

9. I regret that I am unable to make any orders for the period after the year 2007. If there is any issue regarding the rates after this period the plaintiff is at liberty to come to court. But just to emphasise, up to the year 2007, there can be nothing that the defendant can claim as owing and the defendant cannot build on any arrears of rates, penalties, or interest before the year 2007. In other words the slate must be wiped clean up to the year 2007.

10. I wonder why the defendant dragged its feet on this matter when it was pretty obvious by a simple look at the documents that there was nothing owing as at the year 2007. Parties need to concede a matter when it is clear that the case is merited. The defendant will thus pay the costs of this suit. Interest on costs to start accruing from the date of this judgment.

11. Judgment accordingly.

DATED AND DELIVERED THIS 13TH DAY OF JANUARY, 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA