



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ENVIRONMENTAL & LAND CASE 67 OF 2011

**DISHON GITAU MBURU ..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL**

**FRANCIS GICHOMO ..... DEFENDANTS**

**JUDGMENT**

On the 18<sup>th</sup> February 2011, the plaintiff instituted this suit against the **NAIROBI CITY COUNCIL** (1<sup>st</sup> defendant) and **FRANCIS GICHOMO**, 2<sup>nd</sup> defendant. The defendants were served with the summons but they did not enter appearance nor did they file a defence. An interlocutory judgment was entered against the two defendants on 8<sup>th</sup> April, 2011, thus the matter proceeded for formal proof on 11<sup>th</sup> November, 2011.

**DISHON GITAU MBURU** testified that by a letter of allotment dated, 14<sup>th</sup> October, 2010, he was allotted **PLOT NO. A 27/20 UMOJA INNERCORE SECTION 11 INFILL**, by the 1<sup>st</sup> defendant. The plaintiff paid all the requisite charges and took possession of the plot. The plaintiff produced payment receipts for the ground premiums and land rent; as well as the beacon certificate. The plaintiff decided to start developing the plot. First, he commissioned a contractor to prepare for him building plans which he submitted for approval and they were duly approved by the 1<sup>st</sup> defendant.

The plaintiff paid a contractor by the name of *Dismas* to start the construction work on the suit property. The building was to cost the plaintiff KShs.4 million. The plaintiff paid *Mutisya* KShs.385,200/- so as to start the construction which begun and had gone up to the upper slab floor. However, on 3<sup>rd</sup> January, 2011, the 1<sup>st</sup> defendant demolished the plaintiff's structure. By the time the plaintiff's structure was demolished, he had spent KShs.2,592,050/- being construction expenses.

The plaintiff produced photographs to show the debris after his building was demolished. When the building was under construction, it was being supervised by engineers of the 1<sup>st</sup> defendant who kept on issuing inspection certificates. The 2<sup>nd</sup> defendant was sued because he allegedly introduced himself to the plaintiff as the new owner of the plot. He said he had instigated the 1<sup>st</sup> defendant to carry out the demolition exercise of the plaintiff's building. The plaintiff, therefore, seeks for the following orders, which in my opinion are established on a balance of probabilities:

*(a) A permanent injunction restraining the Defendants by themselves their servants or nay person claiming title through them be restrained from trespassing on, constructing on, transferring, disposing of, alienating, demolishing, wasting or in any manner interfering with the parcel of land known as PLOT No.*

A27/20 UMOJA INNERCORE SECTION II INFILL.

(b) *Special damages of KShs.2,593,050/-.*

(c) *General damages for the date of illegal demolition by the Defendants to the suit date of hearing and final determination of the suit.*

(d) *Quiet and peaceful enjoyment parcel of land known as Plot No. A27/20 UMOJA INNERCORE SECTION II INFILL.*

(e) *Costs of the suit and interest.*

(f) *Any other relief that this Honourable Court may deem just to grant in the circumstances.*

The plaintiff's claim was not controverted. Although the defendant was served they failed to enter appearance.

Accordingly I hereby grant prayer (a), (b), (d) and (e).

**Judgment read and signed this 30th day of March, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

**Note:**

*This application was heard and concluded on 13<sup>th</sup> December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.*