

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 114 OF 2009

**KIMEMIA ENGINEERING CONSTRUCTION CO.
LTD.....PLAINTIFF**

**V E R S U S
CITY COUNCIL OF**

NAIROBI.....DEFENDANT

J U D G M E N T

The Defendant filed a defence to the claim but did not attend hearing on 27th January 2011 after the date was taken by consent. The Plaintiff's evidence was therefore not controverted. The evidence was tendered through its director, PW1 Eddy Peter Ndungu Kimemia. Their case was that following application, they were allocated a plot L.R. No. 209/4844/59/R (Exhibit 1) by the Defendant on 18th January 1994 for which they paid (Exhibit 2). Survey was carried out and a Deed Plan (Exhibit 4) prepared. A Lease Agreement was prepared by the Defendant whose Town Clerk and Mayor signed on one part and PW1 on the other. It was registered at the Lands Office and the Plaintiff eventually got the Lease (Exhibit 6). They began paying rates (Exhibits 7 and 8). The Plaintiff's problem is that the Defendant has failed to give them vacant possession but has instead been licencing Kiosk owners who operate on the suit premises. The suit was for vacant possession, damages for loss of user and costs.

I accept the evidence given on behalf of the Plaintiff and find that it has been shown the Plaintiff is the registered proprietor of the suit premises since 7th January 2000. Since then, it was entitled to be put into vacant and exclusive possession to be able to enjoy and use the property. The claim for vacant possession succeeds.

The allotment letter stated that the suit premises would be used for commercial purposes only. PW1 did not testify as to how much he has lost by the non – use of the premises. He did, for instance, call evidence of any drawings or approved plans of any structures they intended to put up on the premises, or indicate the value of any such intended development. I will award KShs. 100,000/= being general damages for non – user. Costs shall follow the event.

DATED, DELIVERED AND PRONOUNCED AT NAIROBI THIS 21ST DAY OF MARCH 2011

A. O. MUCHELULE

J U D G E

