



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

Civil Suit 1655 of 1996

MOUNT KENYA INVESTMENT LIMITED. PLAINTIFF

VERSUS

ALLAN NGETHE. 1ST DEFENDANT

MWANGI GAITHO. 2ND DEFENDANT

CITY COUNCIL OF NAIROBI. 3RD DEFENDANT

J U D G M E N T

In this suit Judgment for the Plaintiff against the 3rd Defendant was entered on 29th July, 2008 for default to enter and file Appearance and defence. The 1st and 2nd Defendants however filed their defences.

On 26th October, 2009 the court proceeded to hear the case on formal proof basis. The Defendants had all been served on 30th September, 2009 for the hearing but none of them attended the court.

The sworn testimony of the Plaintiff, Mount Kenya Investment Limited through one of its directors established that the 3rd Defendant, the City Council of Nairobi through a letter of allocation dated 21st August, 1978, exhibit I, allotted a plot of 10 acres to the Plaintiff at Kahawa West in Nairobi. The Plaintiff offer to within 30 days in writing as well as pay a Stand Premium of Ksh.131,000/- plus Ksh.26,200/- Annual rent to the City Council of Nairobi. The allotment was for a period of 99 years and the 3rd Defendant annexed a Part Development Plan map – exhibit 2.

On 4th September, 1978 the Plaintiff by a letter dated the same date, paid the premium and the Annual Rent both totaling Kshs.141,917/-. Later the Plaintiff wrote three reminders to the 3rd Defendant but the 3rd Defendant kept silence.

By a letter dated 17th April, 1986 exhibit 5, however, the 3rd Defendant acknowledged some of the Plaintiff's earlier correspondence and confirmed that as soon as survey of the plot which it intended to carry out soon was accomplished, the Plaintiff would receive its title to the plot. By April 17th 1989 the 3rd Defendant by a letter dated 17th April 1989 confirmed that the survey was still on going. However by July 1976, the Plaintiff had not received any title to the land in question and indeed discovered that it was being occupied by people unknown to the Plaintiff. When the Plaintiff reported this interference, the Defendants failed to respond.

That is when they moved to file this suit after getting adequate information that the 3rd Defendant had meanwhile reallocated the land to 3rd parties contrary to the existing agreement with the Plaintiff. This court on 30th July, 1996 ordered the Defendants to point out the plot

to the court which the latter failed to do – exhibit 10. The Defendants under the same order was obligated to file a report showing the boundaries of the land. This was filed on 4th September, 1996 – exhibit 11. The report which carried a Part Development Map, confirmed that the land originally allocated to the Plaintiff had later been allocated to Kahawa Soweto Resettlement Group.

Until the year 2005, the 3rd Defendant however, was still demanding Land Rents from the Plaintiff, confirming that the records somehow still held the Plaintiff's name as the owner of the said land. Indeed the Plaintiff believing that that might be so, paid Ksh.11032/25 on 18th April 2005 – Exhibit 12 b.

The Plaintiff filed this suit seeking compensation in form of damages for losing the plot. For that purpose it hired a Valuer, Property World-to establish the present value of the land for the purpose of this suit. Evidence given by one Timothy Saruni, one of the proprietors of the firm, Property World, confirmed that the value of the suit land, measuring 10 acres is Kshs.80,000,000.00. That is to say that one acre was valued at Kshs.8,000,000/-. The Valuation report which was not contradicted is exhibit 13. The plot in the allocation letter was identified as "A" in the Part Development Plan of Kahawa West Industrial Estate.

I have carefully considered the Plaintiff's evidence which was given by one Patrick Matu Wamae, and which was not controverted. I am satisfied that the Defendants allocated the Plaintiff a plot of land measuring 10 acres in Kahawa West Industrial Estate. I am further satisfied that the contract created between the two parties (sides) after the Plaintiff honoured and accepted the offer by paying the Stand Premium and the Annual Rent, was unilaterally breached by the Defendants. They did so by reallocating the same land to third parties without the consent of the Plaintiff who had accepted the offer of the land.

It is also clear from the record that the Defendants thereafter failed to issue a title to the Plaintiff despite many written reminders. Even at the end, it was the Plaintiff who discovered the fact that the land had been reallocated. The Defendants had no courtesy even to just inform the Plaintiff of the development that had taken place.

Considering valuation of the plot, I am satisfied that the same is fair. In Nairobi, one acre would be valued even higher than Kshs.8 million.

In the above circumstances I am satisfied that the Plaintiff has proved its case on the balance of probabilities. In such cases as stated in the case of M'Mukanya Vs M'Mbijiwe (1984) KLR, 761: -

“... once a person has been allocated a plot, and pays the rent due and is given the plot number, the plot becomes his and does not have to be in physical possession and the Local Authority has no such land to allocate to anybody else as it has already been leased and which lease had not been determined.”

That is the state of facts in this case before me. The reallocation of the land to Kahawa Soweto Resettlement Group was a violation of the Plaintiff's proprietary rights. The 3rd Defendant effectively converted the Plaintiff's land by reallocating it. The Plaintiff should and is accordingly entitled to compensation in damages which damages are measured by what the Plaintiff actually lost. This compensation was in the case of Institute of the Virgin Mary, Kenya (Registered Trustees) Vs The Commissioner of Lands (1980) KLR 5, to be the open unexaggerated market value of the land at the time when the claim is determined.

ORDER

Judgment is hereby entered for the Plaintiff against the Defendants, jointly and severally for Kshs.80,000,000/- with costs and interests at the court rates from the date the suit was filed until full settlement.

Dated and delivered at Nairobi this 4th day of February, 2010.

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D A ONYANCHA

JUDGE