



Gatibu & another v Njoroge (Sued as the administrator and legal representative of the Estate of the late Paul Muchiri Ngaruiya) & another (Environment & Land Case 193 of 2011) [2022] KEELC 12611 (KLR) (26 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 193 OF 2011
CA OCHIENG, J
SEPTEMBER 26, 2022**

BETWEEN

TERESA B. WAITHIRA GATIBU 1ST PLAINTIFF

KENNETH KIBOI KINGORI 2ND PLAINTIFF

AND

PETER NJAMBI NJOROGE (SUED AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE PAUL MUCHIRI NGARUIYA) 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. What is before court for determination is the plaintiffs'/decree holders' notice of motion application dated the December 3, 2021 where they seek the following orders:
 - a. That the honourable court do quantify the exemplary and general damages awarded to the plaintiffs herein.
 - b. That costs be provided for.
2. The application was based on grounds on the face of it and supported by the affidavit of the 2nd plaintiff Kenneth Kiboi King'ori where he refers to the judgment delivered on September 21, 2017 and confirms that the court did not quantify exemplary as well as general damages. Further, the applicants have annexed a valuation report from Messrs Trilen Consultants Limited in respect to value of rental income which have accrued to the suit premises and indicate it amounts to Kshs 7,500,000.
3. The defendants never filed any responses to oppose the instant application.



The application was canvassed by way of written submissions.

Analysis And Determination

4. Upon consideration of the instant notice of motion application including the supporting affidavit and submissions, the only issue for determination is whether the court should quantify exemplary including general damages for the mental anguish and disturbances as sought by the plaintiffs/decre holders.
5. The plaintiffs/decre holders in their submissions reiterated their averments as per the supporting affidavit and contended that they are entitled to the orders as sought. They argued that the court ought to consider the amount lost, occasioned by not leasing the apartments erected at the suit premises as valued in the report. They sought for the court to be guided by the valuation report attached to the instant application. To buttress their averments, they relied on the following decisions: *Godfrey Julius Ndumba Mbogori & Another v Nairobi County* (2018) eKLR; *Obongo & Another v Municipal Council of Kisumu*; *Nzuki Isaac Muveke v Francis Njogu Njehia* (2021) eKLR; *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited* (2019) eKLR; *David Gitau Thairu v County Government of Machakos & 2 others* (2020) eKLR; *Little Africa Kenya Limited v Andrew Mwiti Jason* (2014) eKLR; *Republic v Independent Electoral and Boundaries Commission Ex parte Mohamed Ibrahim Abdi & Others* (2017) eKLR and *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* (2016) eKLR.
6. The background against which the instant application is filed is a suit brought by the plaintiffs against the defendants over the suit premises, being land parcel number Ngong/Ngong/35699. The 1st defendant did not enter appearance nor file any defence. The 2nd defendant filed a statement of defence dated the December 9, 2011. The matter was heard and judgment delivered on September 22, 2017 in favour of the plaintiffs wherein they were granted prayers (a), (b) and (c) in the plaint. The said prayers as per the plaint read as follows;
 - a. A declaration that the 1st plaintiff is the rightful registered owner of land reference number Ngong/Ngong/35699 and the sale of the same to the 2nd plaintiff was proper.
 - b. An order directing the 2nd defendant's agents to transfer and register the 2nd plaintiff as the absolute owner of the suit property and an order of permanent injunction do issue against the 1st defendant, his agents and or servants or anyone claiming under him or his name or the estate of Paul Muchiri Ngaruiya aka Paul Muchiri Ole Ngaruiya, refraining them from interfering with the suit property in any manner whatsoever and the 1st and 2nd defendants to pay exemplary and general damages for the mental anguish and disturbances caused to the plaintiffs.
 - c. Costs of this suit.
 - d. Any other relief as the court deems fit.
7. The plaintiffs have now sought for quantification of the exemplary and general damages as awarded to them.
8. I note the fulcrum of the dispute herein revolved around failure by the 2nd defendant to register the 2nd plaintiff as owner of land parcel number Ngong/Ngong/35699 which has since been subdivided as per the valuation report. From a perusal of the proceedings herein including judgment, even though the court directed the 1st and 2nd defendants to pay exemplary including general damages for the mental anguish as well as disturbances caused to the plaintiffs, it never quantified the same. From the



proceedings, the plaintiffs never furnished court with the valuation report, it now seeks to produce. Further, there was no indication that the 2nd applicant had not been in occupation of the suit premises nor was he blocked from renting it out. I note the decree emanating from the impugned judgement had already been issued on October 9, 2017 and enforced as evident in the certificates of official searches (annexure 'kk3'), which indicates that the 2nd plaintiff was registered as the proprietor of the suit lands being Ngong/Ngong/92232, 92236, 92237, 92238, 92239 respectively on March 27, 2018. It is my considered view that this application seeks to reintroduce new evidence which was not tendered during the hearing and hence re open the case. Further, the plaintiffs ought to have sought for review of the judgment to include assessment of the general as well as exemplary damages which they did not. I further note that the plaintiffs have brought the instant application pursuant to the provisions of [order 36 rule 1 and 8](#) which relates to entry of summary judgment as well as costs. They have further relied on sections 1A, 1B and 3 A of the [Civil Procedure Act](#). However, as per the records, the court already entered judgment in their favour on September 22, 2017 with a resultant decree issued therefrom on October 9, 2017, and I hence find that the remedies sought as per the legal provisions they have relied on, are not available to them.

9. Based on my analysis above, I find that the instant application is not merited and will proceed to disallow it.

I make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 26TH DAY OF SEPTEMBER, 2022

CHRISTINE OCHIENG

JUDGE

