

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 213 of 1997

ELIZABETH WAMBUI MUKUNA PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF THIKA DEFENDANT

JUDGMENT

When this case came up for hearing the defendant and his advocate did not attend and the case proceeded in their absence. The plaintiff's claim is that the defendant having attached her household goods listed in paragraph 7 of the plaint they released the same to someone else other than the plaintiff. The plaintiff therefore prays for the return of those goods or the equivalent value of Kshs.768,250/-. The plaintiff also prays for general damages. In her evidence the plaintiff stated that she was allocated a house in Thika Town by the Thika Municipal Council. At one time she was transferred by her employer to Isiolo. She left her children occupying the house No. 1000 and 1001. She also left a lady called Teresia Wambui Mugi to stay in one of the houses looking after the children and ensuring that the rent was paid. There came a time that rent was not paid and the County Council Officials attached her household goods. The plaintiff gave the inventory which she said was prepared during the attachment as an exhibit in this case. On being informed of the attachment the plaintiff paid the rent arrears and then requested the release of those goods. When she went to the defendant's depot she found a person by the name of Samuel Kamau. He told her that her goods had been collected by Eunice Wambui Mukuna. The plaintiff said that that was not her name and she had not authorized any one to get her property. She said that her name as reflected in the Identity Card No. 4877928 was Elizabeth Wambui Kamichar. That the person who collected her goods was not known to her. She therefore stated that her goods were fraudulently given to someone who had no authority from her to collect. She stated that when the County Council allocated the house to her she submitted to them two passport photographs, a specimen signature and her address. Further the plaintiff stated that the release of those goods was before the rent was paid. She said that her household goods were taken away during the attachment together with her certificates. In respect of the goods she said that she did not have receipts because they were taken away from her when the attachment took place.

As I considered the judgment of this case I find that there are three issues that present themselves for determination. The first issue is whether the plaintiffs goods were released to someone else other than the plaintiff. The second issue is whether the plaintiff perpetrated fraud by giving a false ID Card when the goods were released. The third issue is whether the plaintiff's claim is bad in law for lack of a claim in special damages. In respect of the first issue the uncontroverted evidence before court is that the plaintiff's goods were released to someone else called Eunice Wambui Mukuna. The plaintiff stated that that is not her name. In respect of the second issue there was no evidence submitted before court to prove that the plaintiff perpetrated fraud in having those goods released. In respect of the third issue the plaintiff stated that all her household goods were attached illegally by the defendant. She sought that the court will award her damages for Kshs.768,250/-. The Defendant by its defence stated that the claim would fail because the plaintiff had failed to give particulars of Special Damages. The difference between Special and General Damages were explained in the case of *Stoms Broks Aktie Bolag v Hutchinson (1905) A.C. 51J where Lord Macnagten had the following to say;*

“General damages” are such as the law will presume to be the direct natural or probable consequences of the action complained of. “Special damages” on the other hand, are such as the law will infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their

character and, therefore, they must be claimed specially and proved strictly.”

In this case the plaintiff did not know what she actually lost and was guided by the inventory made out by the defendant. In my view what the plaintiff needed to prove to the court was a claim for unliquidated damages. I find that the plaintiff is entitled to general damages as opposed to special damages. In this regard I rely in the case of ***John Wambugu Njoroge v KCB C.A. No. 179 of 1992 where the court of Appeal had the following to say;***

“.....it means that the appellant is entitled to, in terms of money, to be put in the same position as he was immediately before he was wrongfully deprived of his land and the development being and erected thereon. Since he cannot, now, have the return of his land, this court can only deal with the matter in terms of money.”

In the end I find that the plaintiff has on a balance of probabilities proved her case. I accordingly enter judgment for the plaintiff for Kshs.768,250/-. The plaintiff is also awarded costs of this suit.

Dated and delivered at Nyeri this 11th day of March 2008.

MARY KASANGO

JUDGE