



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**Civil Suit 303 of 2005**

**ROBERTSON WAMITHI MUTAHI ..... PLAINTIFF**

**VERSUS**

**THE MUNICIPAL COUNCIL OF NAKURU ..... DEFENDANT**

**JUDGMENT**

The plaintiff **Robertson Wamithi Mutahi** instituted this suit against the defendant, **The Municipal Council of Nakuru**. The plaintiff has sought for orders that the defendant be ordered to renew the building plans of the property known as **Nakuru Municipality/Block 10/1**. The plaintiff has also sought for general damages arising as a result of the defendant's failure to approve the building plans.

The defendant was duly served with the summonses and **Messrs Obura Mbeche & Company** filed a notice of appointment of Advocates. However, no defence was filed and on *5<sup>th</sup> February 2007*, the matter proceeded for hearing by way of formal proof.

The plaintiff who is the registered proprietor of **Nakuru Municipality Block 10/1** gave evidence in support of his claim. He produced copies of the title to his property which was transferred to him in February 1980 after he purchased the land. The plaintiff thereafter submitted the building plans for approval which were duly approved by the Commissioner of Lands in 1979. After the plans were approved, the plaintiff testified that he engaged a constructor to put up a wall in preparation of the building of the plot. However the constructor was stopped by the defendant as a result of which the plaintiff filed a suit being **HCCC NO. 323 of 1992** at Nakuru against the defendant and the Attorney General and he was awarded Kshs.50,000/- for general damages and an order for quiet enjoyment.

Despite the said orders, the plaintiff testified that he was unable to develop the property as the defendant continued to frustrate him by changing the records regarding the rates payments. Eventually on *10<sup>th</sup> January 2002*, the defendant reinstated the plaintiff's name in the records and the plaintiff was able to pay for all the outstanding land rates in respect of the suit premises. Despite having paid the outstanding rates, the plaintiff alleged that the defendant refused to approve the building plans while alleging that there is a dispute over the plaintiff's suit premises.

It is for the above reasons that the plaintiff came to court seeking for the above orders. In support of his claim for damages, the plaintiff produced a report by **Chrisca Real Estates** which shows that the plaintiff lost rent of Kshs.68,000,000/- between the period of January 1980 to June 2006.

I have considered the claim by the plaintiff which was not at all controverted. However, as regards the plaintiff's claim for general damages and the reliance on a report by **M/S Chrisca Real Estates** which the plaintiff produced in support of his claim for general damages, I find that the plaintiff had not filed a list of documents. The document being a valuation report was not produced by the maker. Moreover the estimated loss of such a colossal sum of Kshs.68,000,000/- from January 1980 to June 2006 is without basis for reasons that the property was never developed and even if it was developed there is no guarantee that it could have earned such a an amount from rent.

The plaintiff had filed another suit in 1992 where he was awarded general damages of Kshs.50,000/-. It is not clear when the judgment was delivered though the suit was filed 1992. This claim is also for estimated loss of rents assuming that the plaintiff would have developed the kind of property that could

have attracted this astronomical amount of rent. The reports seems to have taken the rents that accrued by similar buildings in town which I think are not reasonable comparators for a building that has not been constructed. The actual loss that the plaintiff suffered should have been the actual rates that he paid to the defendant which he says was Kshs.10,920/- and Kshs.2,000/- for the clearance certificate.

As regards the claim for the declaration that the defendant be ordered to renew the building plans, I am satisfied that the plaintiff has been able to prove this prayer and I hereby grant the orders.

Accordingly judgment for the plaintiff as follows;

*(a) The defendant is hereby ordered to renew the plaintiff's building plans on parcel of land **Nakuru Municipality Block 10/1.***

*(b) The defendant is hereby awarded general damages for Kshs.12,920/-.*

The plaintiff shall also have the cost of this suit.

**Judgment read and delivered on this 20<sup>th</sup> day of April 2007.**

**MARTHA KOOME**

**JUDGE**