



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

Civil Case 1145 of 2005

JOHN MACHARIA KINUTHIA (Suing as the Administrator of the estate of

**DAMARIS WANJIRY KINUTHIA (DECEASED.....
.....PLAINTIFF**

VERSUS

**OLEKEJUADO COUNTY COUNCIL.....
DEFENDANT**

JUDGMENT

The Plaintiff John Kinuthia Mwaura was the husband of the late Damaris Kinuthia who dies on 20th December 1991. He brought this suit in his capacity as the administrator of the estate of the late Damaris Kinuthia. The deceased was the allottee of Plot No. 592 Ongata Rongai Trading Centre. It is a residential plot which was allotted to her on 21st January 2000.

The Defendant was served with summons but failed to enter appearance nor file a defence. The Plaintiff applied for interlocutory judgment which was entered on 19th December 2006 and the suit was listed down for formal proof.

The Plaintiff in his evidence told the court that he had brought this suit as the administrator of the estate of his late wife Damaris Kinuthia who died on 20th December 1991. He applied and obtained the grant on 13th July 1993. The suit plot was allotted to the deceased on 21st January 2000. He produced the letter of allotment issued by the Defendant on 21st January 2000.

The letter of allotment reads in part: PLOT NO. 592 ONGATA RONGAI TRADING CENTRE.

This is to confirm allotment of the above referred plot to you by Olkejuado County Council acceptance of which will be signified by initially paying:

- (a) Annual rent (revisable) - Shs.300/=
- (b) Survey fees - Shs.3000/=
- (c) Local Authority Services Charge - Shs.190/=
- (d) Plot identification fees - Shs.500/=

CONDITIONS

1. This plot may be developed for residential use only.
2. The council may repossess (without compensation) any plot that remains undeveloped 2 years after allocation.
3. Sale, subdivision or charge of the plot may only be done with the written consent of the council.
4. All building plans in respect of the plot shall be approved by the council before execution.
5. This letter is only valid when signed by the clerk to council.

The Plaintiff further testified that the deceased had paid all the requisite fees as shown in the letter of allotment and produced payment receipts for rent dated 21st February 2000 for Shs.2800/=, 9th July 2001 for Shs.400/= and 7th July 2005 for Shs.2000/= respectively all issued in the name of the deceased Margaret Wanjiku Kinuthia. The Plaintiff further testified that the deceased had taken possession of the said plot in 1969 and had constructed structures and it was in the year 2000 when the President directed that people be allocated these plots.

He had erected 18 rental semi permanent rooms and he collected Shs.1500/= rent per room and it was in July 2005 when the Defendant entered the suit land and demolished his structures claiming that the same were erected on an area reserved for public utility. In the cause of the demolition the Defendants also destroyed all his property including a TV valued at Shs.4800/= and a Sanyo radio valued at Shs.4200/=.

The Plaintiff filed this suit against the Defendant seeking general damages.

Since the loss was quantified the Plaintiff ought to have sought special damages. Special damages must be pleaded and proved.

This is a very unfortunate case despite the fact that the Plaintiff had legal representation. First the letter of allotment indicates that it was to issued Margaret Wanjiku Kinuthia on 21st January 2000 while the Plaintiff in his evidence and the documents he exhibited show that the said allottee had died on 20th December 1991 which means that she was allotted the plot while she was in the grave and she paid all the requisite fee to the Defendant from the grave. The lawyer for the Plaintiff ought to have seen this anomaly and apply to amend the plaint and since the minutes of the Olkejuado County Council were never produced the court will not be in a position to know whether or not the suit plot was allocated, when and to whom.

Further there was no documentary evidence to prove that there were structures erected on the suit land. The Plaintiff in his evidence stated that he had 18 rooms from which he was collecting Shs.1500/= per month per room while in his plaint paragraph 10 he stated that he was collecting Shs.4000/= per room per month.

All in all the Plaintiff has failed to formally prove his case. The suit was negligently handled by counsel for the Plaintiff and I have no option but to dismiss it with no order as to costs.

The Plaintiff's suit is dismissed with no order as to costs as the same was not defended.

Dated and delivered at Nairobi this 19th day of October 2007.

J.L.A. OSIEMO

JUDGE