



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

Civil Case 1509 of 2005

1. Land & Environmental Law Division
2. Subject of main suit – TORT
 - i. Demolition of structure 3/2 storey building by the officials of the Kenya Government on LR Nairobi Block 106/483 Kihara Udongo Co-operative Society.
 - ii. Purpose of demolition, according to the press-incomplete building used as a den for thieves.
 - iii. Letters written to state – no response.
3. Defence – Denial
4. Held Liability 100% quantum
 - i. Special damages nil
 - ii. Normal damages KShs.1m
5. Case Law
 - (a) Gusii Mwalimu Investment Company Ltd v Mwalimu Hotel Kisii Ltd CA 160/95
 - (b) John Hugo Kinyaki v CMC Motor Group Ltd. Hccc1366/97
6. Advocates
 - A. Waiyaki for A.N. Waiyaki & Co. Advocates for the plaintiff-applicant – present
 - V.M. Chahale for 1-5 defendant instructed by Attorney General.

SALOME WANJIRU KAMANDEPLAINTIFF

V E R S U S

SALAIT OMAR-HAJI1ST DEFENDANT

DOUGLAS OUMA & OTHERS2ND DEFENDANT

J U D G M E N T

1. Background

Within the slum areas of Kibera at an area known as Langata Ngila estate, Nairobi is a plot known as sub-division LR 106/483 owned and registered in the name of Salome Kiande, a female adult business lady.

2. She had bought the said piece of land from the original owners being Kibera Undogo Housing Co-operative Society of P. O. Box 72197 Nairobi, of Mbui. She was also a member and obtained allocation of the same. By the society's' letter of 23rd October 2003 they confirmed to her that the said plot registered as Nairobi Block 106/483 with the Lands Department now belongs to her. She went and paid the necessary fees for title and other taxes on 11th July, 2002.

3. It was therefore without a doubt that she was and always been the legal owner of the said land. In owning the land she commenced construction. This said construction consisted of a three storey building. She engaged the services of Hillyland Investments Company that is owned as proprietor by George W. Mwangi (PW2). He drew the architectural plan and the building commenced in phrases and per the floors. The person who actually did the construction was Paul Mwangi Njuguna (PW3). The building had reached the second floor having the bare walls with no electrical, plumbing or finishing work done. The third floors material had been placed on site but construction not began.

II. The dispute

4. On 25th April, 2004 the Provincial Administration demolished the entire building which the said plaintiff, Salome Kamande, estimated to be about KShs. 7 million.

5. She stated that at no time was she issued with any notice nor informed the reasons of such demolition. Her investment had been ruined and she sought compensation.

6. The plaintiff produced a newspaper cutting of the defendants at the scene of the demolition whereby the caption read.

“Hide out demolished ... a house suspected to have been a hide out for criminal was demolished during a said by security officers in Nairobi Kibera slum” (29th April, 2004)

7. The Plaintiff then wrote through her lawyer to the Attorney General, a notice of intention to institute proceedings against the Attorney General. The Attorney General wrote to Mr. Cyrus Gituai – of the Officer of the President Permanent Secretary Provincial Administration and Internal Security to respond to the allegations within 30 days under Section 13A of the Government Proceedings Act.

8. The said Permanent Secretary did not respond. It was therefore not surprising that the plaintiff filed, suit in tort, seeking damages for the special damages, loss incurred and general damages that included mense profits.

9. The Attorney General entered appearance and filed defence. All that was stated in the defence was a denial that the incident occurred; that any loss or damage occurred. This defence made up six short paragraphs. The only admission was that the High Court had jurisdiction to hear this suit.

10. Parties entered into a statement of agreed issues to be determined. The issues involved ownership of land, liability and quantum.

III Issue on ownership of land

11. In the evidence the said plaintiff has established that she is the owner of the said property and duly registered being Nairobi Block 106/483. I would find that she is the rightful owner.

IV Liability

12. The defendants jointly and severally and through their agents are alleged to have ordered the demolition of the said building on grounds that the build harboured suspects committing criminal activities.

13. The demolition was made without any due notice or warning to the plaintiff. The defence stated that in effect they had “**no case to answer**” as no evidence has been proved.

14. All the documents in this case including the newspaper article was shown to the defendants. They made no comment on it or reply.

In the case of: Gusii Mwalimu Investment Co. Ltd V Mwalimu Hotel Kisii Ltd CA 160/95

15. The principle behind that case is that there must be due process in evicting and or removing owners from their premises. I would include this also to mean the issue of demolition of property.

16. In the case of **Cele v Trafford** (1918)2 QB 523 once the plaintiff has proved his evidence, the respondent/defendant must explain and demonstrate that they are not to blame, in this present case on the causes of the demolition. The plaintiff in the present case has shown her property was unlawfully demolished. The defendants have chosen to keep faith and failed to in effect explain the reasons why they did demolish the said structure.

17. I would find that the state is liable in tort at 100 for the acts of its agents and or servants.

V. Quantum

18. The plaintiff stated that she claims special and general damages.

(i). Special damages

19. In assessing the special damages claim the plaintiffs stated she took an estimate given to her by one George W. Maina 0724828112 described as doing a general building construction who gave a figure of KShs. 7,977,325. The plaintiff wants to be compensated for KShs. 7m.

20. This court noted that though the plaintiff was a lawful registered owner of the land and the owner of the construction. The construction was undertaken by persons not qualified in law. The said George W. Mwangi – claims to be a registered contractor. He in effect drew the architectural plans, there was no structural plan (but he claims there was). This structural plan is said to have been drawn by a person who was a graduate of the polytechnic. The architectural drawings were drawn by George W. Mwangi on “British Tutorial College” Certificate of Central Africa Ltd. He was issued with a certification. He holds no degree, no diploma and is not an architect.

19. The contractor who built the said buildings PW3 did not hold any qualifications nor was he registered.

20. The state at once tried to claim that the demolition was due to an illegal structure. The defense never pleaded these facts. A party in a court of law is bound any their pleadings.

21. I would accordingly dismiss the prayer on special damages on grounds that court would not award a person constructing without legal authority.

(ii) Mesne profits

22. As to the issue of mesne profits I dismiss this stated at KShs. 209,000/= per month as not having been proved the building being under construction and not complete income nor future income had been illustrated.

(iii) General damages

23. The law requires where a claim may be proved nominal damages may be awarded. Damages, are the judiciary's way of saying sorry to a litigant who has suffered damages.

In the case law of:-

John Hugo Kinyaki V CMC Motors & British High Commission of Kenya HCC.1366/97.

I did award the plaintiff normal damages on some of his prayers.

25. In this case the plaintiff has shown there is the loss of her property; hence there is an infraction of a legal right through it gives no right to real damages but gives a right to the verdict or judgment because her legal right has been infringed.

26. I hereby award a normal damage of KShs. 1,000,000/- (one million) as reasonable together with costs.

Dated this 16th day of October, 2007 at Nairobi.

M. A. ANG'AWA

J U D G E

A. Waiyaki for A.N. Waiyaki & Co. Advocates for the plaintiff-applicant – present

V.M. Chahale for 1-5 defendant instructed by Attorney General.