

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

Civil Suit 632 of 2004

HURRY NJUBI NDEKEI PLAINTIFF

VERSUS

RUTH WANJIKU KAMAU DEFENDANT

JUDGMENT

On 10th October, 2003, the Plaintiff filed a Restriction on the suit property owned by the Defendant. Then by a Plaint dated 14th June, 2004 he sought transfer of a portion of the suit property on the grounds that the Defendant held it in trust for him.

The Defendant, on the other hand, filed a Defence and Counter-claim seeking to have the Restriction removed, and general damages for wrongful Restriction on her property.

On 25th January, 2005, my brother Hon. Justice J B Ojwang heard an application by the Defendant to strike out the Plaint herein. By a Ruling dated 15th April, 2005, the Judge upheld the Defendant's submissions, struck out the suit, and, among other things, ordered the removal of the Restriction and directed the parties to set the case down for the hearing of the formal proof of general damages claimed by the Defendant in her Counter-claim. The parties did indeed fix the same for hearing before him. However, by then the Judge had been transferred to the Criminal Division, and the file was placed before me.

I heard the Defendant's testimony on her Counter-claim and what she essentially said is that she was unable to subdivide and sell her land because of the Restriction. She produced a Valuation Report that she had commissioned for that purpose, but admitted in cross examination that the purpose of obtaining the Valuation was simply to determine the value of her property. There is no evidence before this Court of exactly what she suffered by way of damages. In any event, if there were specific amounts she suffered, these would be a claim for special damages, and would have had to be pleaded, and specifically proved. Her claim, then, is simply one for general damages, based on the fact that she was denied her right to freely deal with her property because of the unlawful Restriction placed on it by the Plaintiff. Clearly, she was denied the free use and ability to dispose her property for a period of almost two years, for which she is entitled to some general damages. I award her Kshs.10,000/= for the same, together with costs and interest as prayed.

Dated and delivered at Nairobi this 5th day of December, 2006.

ALNASHIR VISRAM

JUDGE