



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

Civil Case 1201 of 1998

NURI ABDULLATIF.....PLAINTIFF

VERSUS

RIVERSIDE MANSIONS LTD.....DEFENDANT

JUDGMENT

The plaintiff is the registered proprietor of all that land known as LR NO. 991/18 situate along Riverside Drive Kileleshwa while the defendant is a corporate entity registered under the provisions of the Companies Act, Cap 486 and the registered proprietor of the premises known as LR NO.991/17.

During the period 1993 the defendant constructed a perimeter wall on LR NO. 991/17 which adjoins the plaintiff's property LR NO. 991/18.

On or about 4th February 1998 the defendants perimeter wall partly collapsed upon the plaintiff's property causing considerable damage. The voluminous and weighty debris consisting of stones, sand, and dust from thereof crushed both the wall and main house of the plaintiff causing serious material damage to the plaintiff's motor vehicles registration numbers KRS 018 and KTR 131. As a result of the said damage the plaintiff sued the defendant for special damages.

It is the plaintiff's case that the defendant by itself, its servants and agents built the adjoining wall so negligently leaving fundamental structural flaws and defects of the wall. The particulars of negligence were listed as:

- (a) Failing to stiffen the pillars of reinforcement of the wall
- (b) Failing to provide weep holes leading to impounding of rain water which in turn increased pressure of the wall.
- (c) Putting up the wall without piers at intervals to strengthen acting like a retaining wall.
- (d) Failing to construct a proper retaining wall
- (e) Creating a dangerous flat land cut and fill.

The plaintiff listed particulars of special damages as follows:

- (a) Loss and damage to motor vehicle registration number KRS 018 pre-accident value Kshs.130,000/=

- (b) Cost of repair of motor vehicle registration number KTR 131 – Kshs.350,000/=.
- (c) Damage to wall of main house and servant's quarters and to grills and glass door – Shs.500,000/=.
- (d) Loss of construction materials (Noodles) stoned in plaintiff's premises – Shs.4,500,000/=.

Motor vehicles damage assessments were done by TRIM – TECH CONSULTANTS and the assessment reports were produced by consents and also the payment receipts for the repair of the premises were produced by consent.

The defendant called one witness HALJI KALYAN HIRANI who gave evidence on its behalf. He told the court that the wall in question was constructed to the highest standards of building pursuant to the Building Plans approved by the relevant local authority and denied that the wall was constructed in a negligent manner. The defendant further told the court that the wall was constructed to the drawings and plans produced to the highest instruction Architectural Standards approved by the City Council. He blamed the collapse of the wall on heavy floods and pressure of water due to infamous heavy rains at that time popularly known as El-Nino which was an Act of God.

But according to the evidence of PW2 CLEMENT MUCHOKI from the City Council Planning Department who visited the premises after the plaintiff had complained after inspection he formed the opinion that the wall had collapsed due to the lack of retainer wall. There was already an existing wall between the property of the plaintiff and that of the defendant which was not strong enough to hold the soil from the neighboring property.

The back fill was very high such that it could not hold itself without a proper designed retaining wall which could retain the weight.

From the evidence above I am satisfied that the plaintiff has proved her case that the wall as built had structural flaws and defects. The plaintiff has proved her case against the defendant on liability.

I now turn to the assessment of quantum. Damage to the two motor vehicles registration Number KRS 018 and KTR 131 was proved at Shs.130,000/= and Shs.350,000/= respectively as per the assessment report by Trim Tech Consultants which was produced by consent. In respect of the damage to the wall and part of the house, the plaintiff produced receipts for Shs.570,830/= but in her plaint she had claimed Shs.500,000/=. But since the plaintiff did not apply to amend the plaint so that the amount paid could tally with the amount pleaded in the plaint, she is only entitled to Shs.500,000/= as pleaded in the plaint.

As regards loss of noodles which the plaintiff claims was valued at Shs.4,500,000/= counsel of defendant submitted that this claim was not proved. He argued that in the plaint they were described as building materials while during the hearing the plaintiff in her evidence described them as some kind of food. This inconsistency is fatal and therefore this claim is not proved and I so find.

The figures may be brought forwards as follow:

Damage to motor vehicle registration number KRS 018 – Kshs.130,000/=. Damage to motor vehicle registration number KTR 131 – KShs.350,000/=. Damage to the wall and part of the house – Shs.500,000/=. Total Ksh.980,000/=.

Accordingly there shall be judgment for the plaintiff and against the defendant for Shs.980,000/= plus costs and interest.

Delivered and dated this 28th day of September 2005.

J.L.A. OSIEMO

JUDGE