



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 5934 OF 1993

RENTFORD DRAPERS LTD.....PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL.....DEFENDANT

RULING

The second defendant raised a preliminary objection to the assessment of damages in this suit on the ground that the damages sought have not been pleaded in the plaint.

This suit was filed on 10.12.93 plaintiffs complaint was that defendants had unlawfully advertised his property for sale by public auction for 17.12.93. Plaintiff averred in para 7 of the plaint that the proposed auction would be unlawful, irregular and void.

By para 8 of the plaint, plaintiff sought an order of permanent injunction. In para 9 of the plaint, plaintiff avers:

“plaintiff also seeks damages”

And in prayer (b) of the plaint plaintiff prayed for

“Damages in any event”

Plaintiff filed an application dated 20.5.96 seeking an order to strike the Defence and for an order that the suit be set down for assessment of damages.

Those orders were given on 25.9.96.

Plaintiff obtained an ex parte interlocutory injunction to restrain the sale of his property on the same day the suit was filed – that is on 16.12.93. On 18.1.94, an interlocutory injunction to restrain the sale was given until the determination of the suit.

Defendants Counsel contends that the particulars of damages are not pleaded and that there is no basis for giving evidence to prove damages as there is no foundation for damages in the plaint.

Plaintiffs counsel on the other hand contends inter alia that:

(i) Judgment has already been entered as prayed in the plaint

(ii) Argument raised by defendants counsel should be raised after plaintiffs Counsel has addressed court on issue of damages

(iii) Plaintiff is entitled to damages because this is trespass to land that plaintiff is entitled to general damages whether plaintiff has suffered any or not.

(iv) The right time to have taken objection was before judgment was entered.

It is true that plaintiff filed an application dated 10.5.96 praying that the defence be struck out on grounds shown in para 1(a) (b) and (c) of the application.

In paragraph 2 of the application, plaintiff sought for striking out the Defence on the further grounds stated there in and sought for dismissal and entry of the judgment in favour of plaintiff as prayed in the plaint.

By para 3 of the application, plaintiff sought an order that the suit be set down for assessment of damages.

In para 4 of the application, plaintiff sought costs.

I have perused the order of the court made on 25.9.96. The court merely struck out the Defence as prayed in prayer 1 of the application and further granted Orders in terms of prayers 3 and 4 of the application. Judgment was not specifically entered as prayed in para 3 of the application. Indeed, judgment would not have been lawfully entered for damages because by order VI Rule 9(4) Civil Procedure Rules allegation that a party has suffered damages and the quantum is deemed as traversed unless specifically admitted. So, in my view, there is no judgment for payment of damages and the issue is still at large.

Plaintiff has not pleaded in the plaint that it has suffered any damages as a result of the unlawful advertisement of its land for sale.

The sale was stopped by court before the due date. It is not apparent from the plaint how the claim for damages arises and the nature of the damages suffered by plaintiff.

As Order VI Rule 8(1) Civil Procedure Rules provides, every pleading shall contain the necessary particulars of any claim.

The plaint does not contain any, particulars of the claim for damages and defendant has not been put on notice of the nature of the damages being claimed – is it for trespass, defamation etc.

In my view, the plaint does not disclose a reasonable claim for damages which can be the subject of formal proof. I uphold the preliminary objection and struck out the claim for damages with no orders as to costs.

E. M. Githinji

JUDGE

13.3.2003

Mr. Parekh present

Mr. Gathenji absent – his clerk present

Mr. Parekh

I ask for leave to appeal

E. M. Githinji

JUDGE

Order: Leave to appeal - granted. Ruling to be typed.

E. M. Githinji

JUDGE