



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 2709 OF 1995

PROFESSOR ISSACK WAMOLA PLAINTIFF

VERSUS

EUSTACE MWACHIA MWANGEMI DEFENDANT

JUDGMENT

By a plaint filed in court on 29th August 1995, the plaintiff Prof. Isaac Wamola sued the defendant Eustace Mwachia Mwangemi seeking:-

1. General damages for trespass
2. removal and rectification of the nuisance on the plaintiff's property.
3. a permanent injunction to restrain the defendant from interfering or trespassing on the plaintiff's plot and causing any further nuisance thereof.

The defendant filed a defence in which he denied allegations of trespass and interference with the plaintiff's plot as alleged. He also prayed that the plaintiff's suit be dismissed with costs.

In court during the hearing, the plaintiff, who is a lecturer at the University of Nairobi's medical school testified that the defendant is his neighbour in Kungu market Taita District. The 2 own adjoining plots of land. The plaintiff's plot is No.5. These are market plots which were allocated by Taita County Council.

The plaintiff bought the plot from one Francis Fumba, and applied for transfer from Taita County Council. This was approved. The plaintiff produced the relevant correspondence as Ex. 1 and 2. After transfer the plaintiff became the person responsible for payment of the County Council rates. He received several letters of demand which he produced as Ex.3. Subsequently the plaintiff built a house on the said plot, part of which he used as his residential house as he was not ready to start using it as a shop.

The plaintiff complained that the defendant started interfering with his land, by building an extension which crossed over onto his (the plaintiffs land).

The plaintiff wrote a letter of complaint to the County Council, and he got a reply back, dated 5.12.78. The letter was actually written to the defendant but copied to the plaintiff. The letter demanded that the defendants stops the development which was encroaching onto the plaintiff's land. The letter was produced in court as an exhibit.

The defendant did not stop the interference but instead continued to use the plaintiff's plot as a place for grazing his animals. He also dug trenches on the plaintiff's plot for the disposal of rain water and waste water. The plaintiff complained that the defendant did not have his permission to do this. The officials of Taita County Council visited the plot and warned him to stop, but he did not stop. The interference caused the damage of the plaintiff's sock pit. This was confirmed by the investigators hired by the plaintiff. These were Pioneer Investigators Company Ltd. The company was owned by Laban Tole. They carried out their investigations in the presence of the plaintiff and prepared a report which he produced as Ex.5.

The plaintiff has not been able to occupy his building since the interference started because the toilets and bathrooms are damaged.

He prayed the court to grant an injunction to stop the defendant from interfering with his plot.

The defendant did not give evidence in court. His advocate sent another advocate to come and ask for adjournment for the reason that he was before another Judge. I refused to grant the adjournment sought.

From the evidence on record, I am satisfied that the plaintiff is the owner of the plot in question. He produced letters of transfer from the County Council and also evidence to show that he had paid rates as demanded by the County Council.

His evidence about interference by the defendant was not challenged. I believe that evidence which I find to be true. The plaintiff prayed for damages for trespass, which I am willing to award, but the plaintiff did not assist the court in mitigating this loss. He did not for example call the maker of the report to explain his assessment of the loss suffered as a result of the interference; and put a value on it. Having said that I will nevertheless note that the various pictures attached to the report do show some evidence of interference. For all these reasons, I find judgment for the plaintiff against the defendant and proceed to award a sum of Kshs.80,000/= as damages for trespass.

I also grant prayers (b) and (c) of the plaint dated 31st July 2995. I also award the plaintiff the costs of this suit.

Dated at Nairobi this 17th day of September 2003.

JOYCE ALUOCH

JUDGE