

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CIVIL CASE NO. 2348 OF 1996

OLERAI INVESTMENY LIMITED.....PLAINTIFF

V E R S U S

PRINCIPAL KENYA INSTITUTE

OF MASS COMMUNICATION.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

J U D G M E N T

On 20th September, 1996 the Plaintiff sued the Defendants seeking their eviction from L.R. No. 209/12046 (hereinafter referred to as "the suit land"). It was also sought for an order against the Defendants to remove a fence they had erected around the suit land. Finally, the Plaintiff also sought general damages for trespass. The Defendants filed their Defence on 9th January, 1997 but the same was struck out by the court (GACHECHE, Commissioner of Assize) on 13th November, 2000. The case now comes up for formal proof.

At the hearing of the formal proof, the Defendants did not attend although they had been served.

In his testimony, Mr. Sadhu Singh Devgun, a Director of the Plaintiff Company, produced a Letter of Allotment from the Commissioner of Lands showing that the suit land had been allocated to one C.M. Wambua. He also produced an Agreement for sale showing that the suit land had been sold to the Plaintiff. Other documents produced were a transfer form; a copy of the title deed (the original having been seen by the court); receipts for land rates paid up to 1997; a letter from the Commissioner of Lands notifying the 1st Respondent to remove the fence it had erected around the suit land; copies of housing plans; an Architect's feasibility study on a proposed project; an Agreement for sale of the suit land between the Plaintiff and a third party; and a letter of consent to transfer the suit land from the Commissioner of Lands.

On the whole, the evidence is that the suit land was purchased by the Plaintiff for K.shs. 1,450,000/= and the same would have been sold to the third party for K.shs. 6,000,000/=. The sale to the third party fell through as the Plaintiff could not give vacant possession in view of the matters already said. Mr. Devgun stated that the Plaintiff was in the business of property development. It had been intended to construct flats on the suit land and this would have fetched the Plaintiff a profit of K.shs. 15,900,000/= as per the architect's feasibility study. The Plaintiff claimed to have lost this profit due to the 1st Defendant's occupation thereof. However, this claim was not argued in the written submissions filed by the Plaintiff's Advocates. The Plaintiff also claimed K.shs. 80,000/= it had paid the architects.

In their written submissions, the Plaintiff's Advocates argued that if the sale to the 3rd party had not fallen through as has already been seen, the Plaintiff would have made a profit of K.shs. 4,550,000/= in 1997. They claimed this sum together with interest thereon at the rate of 25% from 5th February, 1997. They also claimed K.shs. 80,000/= paid to the Architects. The claim for K.shs. 80,000/= is no doubt a claim for special damages. It was not only not specifically pleaded but also not proved and the same must, without more, be rejected.

There is no doubt that the Plaintiff has suffered damage as a result of the 1st Defendant's unlawful acts. It was not controverted in any way that the Plaintiff would have made the profit of K.shs. 4,550,000/= had the sale to the third party not fallen through. This was caused by the 1st Defendant's unlawful occupation thereof. This loss is wholly attributable to the Defendants. However, it must be noted that since the

Plaintiff still has the suit land, his net loss must be the difference between the anticipated profit on the sale and the value of the land. That is K.shs. (4,550,000 – 1,450,000), 3,100,000. The Plaintiff also claims interest at 25% p.a. from 5th February, 1997. However, it has not made out a case, nor adduced any evidence on this claim. I cannot, therefore, allow this claim, and will award interest at court rate from the date of the filing of the suit until full payment I, therefore, enter judgment for the Plaintiff for K.shs. 3,100,000/=; together with costs and interest.

DATED and DELIVERED at NAIROBI this 24th day of May, 2001.

ALNASHIR VISRAM

JUDGE.