



Carey Investments Limited v Nairobi City County (Environment & Land Case 168 of 2019) [2024] KEELC 629 (KLR) (8 February 2024) (Judgment)

Neutral citation: [2024] KEELC 629 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 168 OF 2019**

**LN MBUGUA, J
FEBRUARY 8, 2024**

BETWEEN

CAREY INVESTMENTS LIMITED PLAINTIFF

AND

NAIROBI CITY COUNTY DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by a plaint dated 21.5.2019 claiming to be the registered proprietor of Plot No. LR Nairobi/Block 82/2028 (suit premises). That on 15.5.2019, the Defendant issued it with an enforcement notice indicating that construction works on the suit premises had encroached on the sewage way leave. The plaintiff therefore sought the following orders;
 - a. An injunction to restrain the Defendant, its agents and /or its servants from interfering, demolishing, harassing and/or in any way interfering with the construction/developments on the Plaintiff's Plot No. LR No. Nairobi/Block 82/2028 (New Donholm) pending the hearing and determination of this suit.
 - b. General damages.
 - c. Costs of this suit.
 - d. Interest on 2 & 3 at court's rates.
2. The Defendant was served with pleadings herein and thereafter it entered appearance vide a Memorandum of Appearance dated 2.12.2019. The defendant was also represented in court on various occasions, but it did not file a defence. Thus the suit proceeded as a formal proof hearing.
3. The Plaintiff's case was advanced by PW1, Charles Jeremy Gichohi Gitaka, its director. He adopted his witness statement dated 21.5.2019 as his evidence. He also produced the 19 documents contained in the Plaintiff's bundle dated 21.5.2019 as P. Exhibit 1-19.



4. PW1's evidence is that on 15.5.2019, the defendant served him with a notice alleging that plaintiff's construction had encroached on the sewer way leave and he was required to remove his developments within 7 days.
5. PW1 averred that the notice was defective as the plot number mentioned therein did not belong to him, adding that plaintiff had complied with all the legal and procedural requirements.
6. In its submissions dated 14.12.2023, the Plaintiff argues that since its case was unchallenged, it was entitled to the prayers sought.
7. I have considered the pleadings, the evidence tendered and the submissions proffered by the Plaintiff. The issue for determination is whether the plaintiff is entitled to the injunctive orders and damages as claimed in the plaint. The claim of the plaintiff is hinged on the averment that it had complied with all development permissions prior to commencing its development on the suit parcel and therefore the Defendant was not justified to issue it with an enforcement notice.
8. It is the view of this court that the said evidence of the plaintiff was presented in the wrong forum. I say so because Section 72 (3) and (4) of the *Physical and Land Use Planning Act* contains a framework on adjudication of disputes relating to enforcement notices; It provides that a person aggrieved by an enforcement Notice may appeal to the relevant County Physical and Land Use Planning Liaison Committee.
9. The enforcement Notice dated 15.5.2019 clearly stated that if aggrieved, the owner of the development was to appeal to the relevant Liaison Committee. Thus the Plaintiff was obliged to pursue the dispute resolution mechanism set out under the relevant statute (*The Physical and Land Use Planning Act*) even if reference was made to parcel 82/2038. After all, plaintiff appears to be the one who was undertaking the developments thereof.
10. In *Speaker of National Assembly v Karume* (1992) KLR 22, the court held that;

“Where there is a clear procedure for the redress of a particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”
11. Further, while reiterating the need to exhaust dispute resolution mechanisms provided by the law, the Court of Appeal addressed itself as follows in *Whitehorse Investments Ltd v Nairobi City County* [2019] eKLR;

“The issues in dispute were purely matters of building planning and the ensuing development of a hotel within the County of Nairobi that are entirely covered under the Physical Planning Act. There was no good reason given as to why the appellant failed to pursue that avenue.”
12. Similarly, in the matter at hand the plaintiff failed to adhere to the doctrine of exhaustion of remedies as provided by the legal frame work set out under the *Physical and Land Use Plaining Act* on matters “enforcement notices”. In the circumstances, I find that plaintiffs case has been tabled in the wrong platform and is therefore struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA
JUDGE



In the presence of:-

Nduati for Plaintiff

Court Assistant: Cheronno

