



**Ambe v Attorney General & another ((On behalf of Ministry of Livestock Development))
(Environment & Land Case 603 of 2014) [2023] KEELC 639 (KLR) (7 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 639 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 603 OF 2014
DO OHUNGO, J
FEBRUARY 7, 2023**

BETWEEN

JAMES JESSE AMBE PLAINTIFF

AND

**ATTORNEY GENERAL (ON BEHALF OF MINISTRY OF LIVESTOCK
DEVELOPMENT) 1ST DEFENDANT**

**COUNTY GOVERNMENT OF VIHIGA 2ND DEFENDANT
(ON BEHALF OF MINISTRY OF LIVESTOCK DEVELOPMENT)**

JUDGMENT

1. Proceedings in this matter commenced on March 19, 2012 when the plaintiff filed a plaint dated March 16, 2012. The plaint went through several amendments resting with further amended plaint dated 2nd November 2021.
2. The plaintiff averred in the further amended plaint that on April 11, 1989 he applied for a plot from Luanda Urban Council and that his application was approved on January 16, 1990 whereupon he was granted a permit or licence to occupy and develop the plot known as plot No 15 Mukhalakhala market (the suit property). That upon building plans being approved, he constructed a shop and living rooms on the suit property. The plaintiff further averred that without any colour of right or notice, the Ministry of Livestock Development in conjunction with the County Government of Vihiga, the successor of the then Luanda Town Council wrongfully entered upon the suit property on December 27, 2014, demolished the building thereon and carted away all the plaintiff's other property then stored in the said premises resulting to the plaintiff suffering loss and damage. Particulars of damage were itemized at paragraph 10 of the further amended plaint to include revalued market value of the demolished improvements at Kshs 4,000,000, valuer's fee at Kshs 20,000, revaluation fee at Kshs 10,000 and value of items lost at Kshs 601,600.



3. The plaintiff therefore prayed for judgement against the defendants jointly and severally for:
 - a. Special damages in the sum of Kshs 4,631,600.
 - b. Compensation for lost rent at the monthly rate of Kshs 30,000 since demolition on January 27, 2014 until payment in full.
 - c. General damages for wrongful demolition.
 - d. Costs.
 - e. Interest.
 - f. Any other or further relief.
4. The plaint dated March 16, 2012 named the second defendant as “Clerk Luanda Town Council”. In the amended plaint dated November 10, 2014, the second defendant was changed to “The County Government of Vihiga”. Prior to the amendments, the Clerk Luanda Town Council filed a defence dated July 4, 2012. He denied the plaintiff’s averments and stated, without prejudice, that it only rented the plots with the express condition that the occupancy was temporary. He added that the suit property had always been owned and used by the second defendant who was carrying out development on its own property. He prayed that the suit be dismissed.
5. At the hearing, the plaintiff testified as PW1 and adopted his statements filed herein as his evidence in chief. He stated that on April 11, 1989 he applied for a plot to build a shop at Mukhalakhala market from the then Kakamega County Council and Luanda Urban Council and that he was subsequently issued with permit to occupy plot No 15 Mukhalakhala market for his business. That on April 11, 1989 he paid an application fee of Kshs 300 for the plot and that he was thereafter issued with building plans duly planned by the then Kakamega County Council for which he paid Kshs 1,100. That after approvals by the District Commissioner Kakamega, the District Health Inspector and the Clerk County Council Kakamega, he proceeded to put up his buildings and occupied the plot and buildings thereon for commercial purposes. That sometime in December 2011, without notice or consultations, the area councillor Mukhalakhala ward held a meeting at the market and said that the Town Council of Luanda had donated the area to the Ministry of Livestock to construct Luanda Slaughterhouse and that thereafter the council issued notices to some plot owners at Mukhalakhala market, except him, to demolish their buildings. He further stated that sometime thereafter a contractor started demolishing buildings, fenced the plot and denied him access to it. That he instructed a valuer by the name L. O Madende who valued the plot and all the developments thereon and prepared a valuation report.
6. The plaintiff further stated that on January 27, 2014 the then Ministry of Livestock Development in conjunction with the County Government of Vihiga demolished his building on the suit property. That subsequent to the valuation dated March 15, 2012 done before demolition, he instructed his valuer who did a post demolition and compiled a report dated May 16, 2020. He urged the court to grant him compensation in the sum of Kshs 4,431,600, lost rent, general damages costs and interest as set out in the further amended plaint. He added that he was paying rates until the demolition but he does not have any title deed in respect of the suit property.
7. Okeyo Luke Madende, a valuer by profession, testified as PW2. He stated that he did a valuation of the plot and improvements thereon and prepared a report dated March 15, 2012 which put the market value at Kshs. 2,800,000. That the plot had a front shop building and an incomplete rear building. That he was paid Kshs 20,000 and that the plaintiff later asked him to do another valuation for litigation purposes as a consequence of which he did another site visit on May 14, 2020 and found that the buildings that were on the plot had been demolished. That he prepared a report dated May 26, 2020 in



- which he assessed the value of the buildings or the cost of building a new building at Kshs 4,000,000 since it was a commercial building and lost rental income at Kshs 30,000 per month since demolition.
8. The plaintiff's case was then closed. Both the first and second defendants closed their cases without offering any evidence. Parties thereafter filed and exchanged written submissions.
 9. The plaintiff filed his submissions on October 3, 2022 and argued that the demolition of his property was wrongful and contrary to Article 40 of the Constitution and was carried out without any proper notice or reasons, contrary to Article 47 of the Constitution. He contended that he is entitled to Kshs 4,631,600 special damages as particularised at paragraph 10 of the further amended plaint and supported by the valuation reports, receipts and inventory as well as compensation for lost rent. In further submitting that the measure of damages should be awarded in a sum of money so as to put him in a position which is the same or nearly as close to the position he would have been had he not sustained the injury or loss, the plaintiff relied inter alia on Municipal Council of Eldoret v Titus Gatitu Njau [2020] eKLR and urged the court to allow his case and to also grant him KShs 20,000,000 being damages at large.
 10. The first defendant filed his submissions on October 5, 2022 and argued that there is no cause of action against the first defendant as the Ministry of Livestock Development on whose behalf the first defendant has been sued, had already been devolved to County Government of Vihiga as per the fourth schedule of the Constitution and that upon devolution, the National Government ceased to manage the counties and their urban areas and cities in view of County Governments Act No 17 of 2012 as read with Urban Areas and Cities Act No 13 of 2011. The first defendant further submitted that the suit property was taken over by the second defendant by virtue of section 134 of the County Government Act, 2012 and that according to County Governments Act No 17 of 2012 as read with Urban Areas and Cities Act No 13 of 2011, the first defendant has been wrongly sued.
 11. The first defendant went on to submit that the plaintiff did not have any allotment letter but only a permit to occupy the premises for the year 1990. Further, that the plaintiff did not have any receipts to show that he was paying rates from the year 1990 to 2014 when the demolition took place or any documents to show that he was making rental income from the premises before demolition. That the plaintiff failed to apply for extension of user and should therefore not be awarded compensation. That the plaintiff remained adamant despite having knowledge of notices from December 2011 until January 27, 2014 that the buildings within Mukhalakhala market would be demolished. That the permit dated January 16, 1990 was clear that the plaintiff upon accepting the grant was to pay Kshs 1100 and complete the building within twelve months from the date of acceptance unless the extension was granted, yet it is evident from the valuation report dated March 15, 2012 that the plaintiff never completed the buildings and there was no extension.
 12. The first defendant further submitted that the plaintiff is not the proprietor of the suit plot and that the plot was public land. The first defendant therefore concluded by submitting that the plaintiff's suit should be dismissed with costs to the first defendant.
 13. The second defendant did not file any submissions.
 14. I have carefully considered the parties' pleadings, evidence, and submissions. The sole issue that arises for consideration is whether the plaintiff is entitled to the reliefs sought.
 15. The foundation of the plaintiff's case is that he applied for a plot from Luanda Urban Council on April 11, 1989 and that upon his application being approved on January 16, 1990, he was granted a permit to occupy and develop plot No 15 Mukhalakhala market. A reading of the permit shows that



the plaintiff was required to complete construction within 12 months from January 29, 1990, the date when he accepted the terms of the offer.

16. The permit granted to the plaintiff was for all intents and purposes akin to an allotment letter. It was not title to land but an offer with terms and conditions which the plaintiff was required to fulfil. The Court of Appeal discussed the effect of an allotment letter in *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR, where it stated:

... Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.

17. The plaintiff pleaded in his plaint that he constructed a shop and living rooms on the suit property. The permit granted to him stated however that it was for a business plot. The plaintiff did not adduce any evidence to show that he constructed within the period provided in the permit or that he obtained any extension. Other than the photographs in the valuation report, nothing was produced to demonstrate actual construction and occupation, both of which are regulated activities in respect of which documentary evidence should be readily available. Similarly, it should not be difficult to provide some evidence that construction costs were incurred, as a way of showing that construction took place, yet that was not availed. The valuation reports that were produced were prepared with a view to litigation and in the absence of corroborating documentary proof of validity of the plaintiff's occupation of the premises and actual construction, are of little help.
18. The plaintiff has failed to prove entitlement to or ownership of the suit property as at the time of demolition and is thus not entitled to the reliefs sought.
19. I find no merit in the plaintiff's case and I therefore dismiss it. No order on costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF FEBRUARY 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Nyikuli for the plaintiff

No appearance for the first defendant

No appearance for the second defendant

Court Assistant: E. Juma

