



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**CIVIL SUIT NO. 247 OF 2019**

**PAUL MABWA ASILA.....PLAINTIFF**

**=VERSUS=**

**NAIROBI CITY COUNTY .....DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion dated 12<sup>th</sup> March 2020 in which he sought the following orders: -

**1) Spent**

**2) That the Honourable Court be pleased to enter Judgement on admission against the Defendant.**

**3) That Judgement be entered in favour of the Plaintiff in terms of prayers 1 to 8 of the Plaintiff.**

**4) That the Defence be struck out and Judgement entered accordingly.**

2. The Applicant contends that the Defendant/Respondent has admitted the averments in the Plaintiff through various correspondences and that as such, there is nothing left for the determination by the court. The Applicant therefore argues that the Respondent's defence contains mere denials and should be struck out and Judgement entered as prayed for in the Plaintiff.

3. The Respondent opposed the Applicant's application through grounds of opposition which are not dated. The Respondent contends that it has not made any admissions in its defence dated 6<sup>th</sup> November 2020. (sic). The Respondent further argues that the Applicant's application is misconceived, bad in law and is an abuse of the process of the court and therefore should not be allowed.

4. The parties had been directed to file written submissions on 27<sup>th</sup> January 2021. The Applicant was to file and serve his submissions within 14 days. The Respondent was to file its submissions within 14 days of being served. As at the time of writing this Ruling on 7<sup>th</sup> April 2021, neither the Applicant nor the Respondent had filed their submissions.

5. I have considered the Applicant's application as well as the opposition to the same by the Respondent. There are two limbs under which the Applicant has brought his application. The first limb is under admission and the second limb is under striking out of the defence. There are two issues which emerge for determination. The first is whether the Respondent has admitted the Applicant's claim as per the Plaintiff filed herein. The second issue is whether the Respondent's defence should be struck out.

6. The Applicant filed his Plaintiff on 26<sup>th</sup> July 2019. The Respondent filed a defence on 7<sup>th</sup> November 2019. The Applicant and Respondent filed their agreed issues on 4<sup>th</sup> February 2020. The Applicant then proceeded to file an amended Plaintiff without leave of the court on 28<sup>th</sup> February 2020. The amended Plaintiff attracted filing fees of Kshs.75/= though the Applicant was seeking compensation of Kshs.160,000,000/=.

7. I have looked at the defence filed by the Respondent. There are no admissions made therein. I have looked at the letter dated 14<sup>th</sup> October 2011 which was written by Nairobi City Council and the one dated 29<sup>th</sup> May 2017 which is written by Nairobi City County. These two letters do not constitute admissions which can lead to entry of Judgement. For instance, in the letter dated 14<sup>th</sup> October 2011, the Nairobi City Council states that though the suit property was allocated to the Applicant, it had already been built up as part of Kiambiu Village. The other letter of 29<sup>th</sup> May 2017 by the Nairobi City County states that the suit property was allotted to the Applicant in August 1994 and that the same property was resurveyed by Nairobi City Council and allotted to other parties in 2000.

8. The other letters are from the National Land Commission. One is dated 15<sup>th</sup> August 2015. The other is dated 29<sup>th</sup> May 2017. The letter of 25<sup>th</sup> August 2015 is clear that the Nairobi City Council did not expressly make admissions to the claim by the Applicant. It is therefore clear that there is no express admission of the Applicant's claim as to enter judgement based on the said letters. The letter of 25<sup>th</sup> August 2015 from the National Land Commission referred to various documents which are crucial in tracing the history of allocation but which documents were left out by the Applicant.

9. On the second issue as to whether the Respondent's defence ought to be struck out, the answer is simple. The Respondent's defence cannot be struck out as it raises triable issues as can be seen from the agreed issues filed by the parties. The most important issue which will have to be determined is whether the allocation of the suit property was done when Kiambiu village had already been built up. The minutes of the General Purposes Committees meeting of 12<sup>th</sup> January 2000 will give an insight on the establishment of Kiambiu Settlement Scheme and the allocation to the Applicant. The Respondent's defence cannot therefore be struck out. I therefore find no merit in the Applicant's application which is hereby dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8TH DAY OF APRIL 2021.**

**E. O.OBAGA**

**JUDGE**

In the Presence of :-

M/s Shikali for Mr Kiprop for Plaintiff

M/s Gesare for Mr Saende for Plaintiff

Court Assistant: Okumu

**E.O.OBAGA**

**JUDGE**