



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 1503 OF 2014

FRED KAMAU CHEGE.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY.....DEFENDANT

JUDGMENT

1. This suit was instituted against the City Council of Nairobi as Nairobi High Court Civil Case Number 359 of 2001. On 28/11/2014, Aburili J directed that the suit be transferred to the Environment and Land Court. Upon transfer, it was registered as Nairobi ELC Case No. 1503 of 2014. Subsequently, on 27/7/2017, this court allowed the plaintiff's plea for substitution of the City Council of Nairobi with its constitutional and statutory successor, the Nairobi City County.

2. Through an amended plaint dated 20/5/2015, the plaintiff sought the following verbatim orders against the defendant:

- a) A declaration that the plaintiff is entitled to absolute ownership and quiet possession of land parcel number NAIROBI/BLOCK 107/382.*
- b) An injunction to restrain the defendant, its agents and /or servants, or whosoever from remaining on or continuing in occupation of NAIROBI/BLOCK 107/382.*
- c) An injunction to restrain the defendant, its agents and/or servants, or whosoever from interfering with the plaintiff's quiet possession and rights of ownership over NAIROBI/BLOCK 107/382.*
- d) General damages and exemplary damages for loss of user.*
- e) In the alternative to prayers (b) and (c) above, the defendant do pay the plaintiff a sum of Kshs.40,014,356 with interest at 18 % p a from 24.7.2001 until payment in full for value of the property and special damages and costs incurred.*
- f) Costs of this suit*
- g) Any other relief which this honourable court may deem fit and just to grant.*

3. The plaintiff contended that the defendant leased to him a piece of land known as **NAIROBI/BLOCK 107/382** through an instrument of lease registered 6/2/1998. Consequently, he was issued with a certificate of lease dated 6/2/1998. He stated that he applied for approval of building plans on 30/11/1999 and the approval was granted by the defendant on 12/2/2000. He contended that the defendant threatened his possession of the suit property and rights of ownership by trespassing on the suit property and wrongfully occupied the suit property. He further contended that on 24/7/2001, the court ordered the defendant to stop interfering with the suit property but the defendant did not cease the trespass. According to the plaintiff, the defendant's actions amounted to illegal compulsory acquisition. He added that he had concluded plans to develop and operate a nursery school on the suit property and was therefore entitled to costs of the approvals and other related charges. He specifically pleaded for an award of Kshs 40,014,356 comprising of the value of the suit property (Ksh 37,950,000) and related expenses.

4. The defendant filed its defence on 10/12/2001. Its case was that it allocated the plaintiff the suit property and approved all the building plans. However, it denied trespassing on the plaintiff's property. Paragraph 3 of the defence reads thus;

“3 Whereas the defendant admits allocating to the plaintiff the land parcel NAIROBI/BLOCK 107/382 and approving his building plans, it, however, denies that it, its agents and/or servants have attempted, and/or in any way interfered, abrogated and threatened the plaintiff's possession thereof as alleged in paragraphs 6 and 7 of the plaint. The plaintiff is put to strict proof thereof.”

5. The defendant did not attend the hearing despite having been served with a hearing notice through counsel on 22/11/2018. The plaintiff led evidence by two witnesses. The plaintiff testified as PW1. He adopted his witness statement dated 11/9/2017 as his sworn -evidence- in chief and produced a bundle of 26 documents as exhibits. He stated that the court granted him an interim injunction but the defendant persisted with the trespass in violation of the injunctive order. He further stated that there was a chief's office and City Council offices in the suit property.

6. Joseph John Wahome testified as PW2. He stated that he was a licensed valuer. He stated that the plaintiff instructed him in May 2015 to assess the value of the suit property. He contended that the value of the suit property was Kshs. 33,000,000. He further stated that the plaintiff was entitled to 15% disturbance compensation translating to Ksh.4, 950,000. He further contended that he charged a fee of Ksh. 140,000. He produced a copy of the assessment report and a receipt.

7. The plaintiff filed his submissions on 26/2/2019. He submitted that he was entitled to the suit property because he was the legal owner thereof. He added that the trespass amounted to compulsory acquisition. He argued that the process of compulsory acquisition was laid down in Sections 3, 4, 5, 6 and 8 of the Land Acquisition Act. (now repealed) Reliance was placed on **Micah A. Oriedo v County Government of Vihiga & another [2018] eKLR**. He further submitted that he was entitled to the market value of the suit property being Kshs. 37,950,000. Reliance was placed on **Isaiya Mugambi M'Muketha v Attorney General & 2 others, Chuka ELC No. 04 of 2018** where the plaintiff was compensated at the current market value. He submitted that he was entitled to damages and exemplary damages since he had not used his land for the past 18 years. He submitted that he was entitled to damages of Kshs. 2,000,000 and exemplary damages of Kshs. 2,000,000. Reliance was placed on **Isabel Waithira Njoroge v Permanent Secretary Ministry of State for Provincial Administration & Internal Security & 4 Others [2014] eKLR** where Gacheru J awarded Kshs. 2,000,000 general damages. Reliance was also placed on **County Government of Meru v Isaiyah Mugambi M'muketha [2017] Eklr** where the court awarded Kshs. 1,000,000 for general damages and Kshs. 2,000,000 exemplary damages.

8. I have considered the statement of claim by the plaintiff, the defendant's statement of defence, the plaintiff's evidence, and the submissions. I have also considered the relevant legal framework and jurisprudence. The plaintiff contends that the defendant trespassed onto the suit property. The plaintiff's case is that there is constructive compulsory acquisition of the suit property by the defendant. The defendant has admitted that it allocated the suit property to the plaintiff but denies trespass onto it. The only issue in this suit therefore is whether the plaintiff is entitled to the orders sought in the plaint against the defendant.

9. The plaintiff produced a letter of allotment dated 18/1/1994, a lease registered on 6/2/1998 and a certificate of lease issued on 6/2/1998. There is therefore probable evidence that the plaintiff is the proprietor of the suit property. The defendant has unequivocally admitted that fact in paragraph 3 of its statement of defence.

10. It is however noted from the evidence of the plaintiff that there is a chief's camp on the suit property. A chief camp, in my understanding, is a national government office; it is not a county government office. Secondly, neither the plaintiff nor the valuer led any evidence to demonstrate that the defendant had erected any structure on the suit property or that the structures which are on the suit property (if any) belong to the defendant. In the circumstances, I do not think there is a proper basis for inferring constructive compulsory acquisition by the defendant. Similarly, there is no evidential basis for condemning the defendant to pay damages. Consequently, although the defendant did not lead evidence, the claim for damages, the alternative plea for Kshs 40,014,356 on account of constructive compulsory acquisition, and the claim for costs, cannot succeed in the absence of evidence directly linking the defendant to the alleged compulsory acquisition and trespass.

11. Consequently, in the absence of any controverting evidence, the plaintiff's claim is allowed in the following terms:

a) It is hereby declared that the plaintiff is the leasehold proprietor of Land Title Number Nairobi/Block 107/382 and is entitled to quiet possession of the property.

b) The defendant is restrained against interfering with the plaintiff's quiet possession and ownership of the said property.

c) Each party shall bear own costs of this suit.

DATED, SIGNED AND READ AT NAIROBI ON THIS 11TH DAY OF JULY 2019.

B M EBOSO

JUDGE

In the presence of:-

Ms Wakarura for the plaintiff

Court Clerk - June Nafula