



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 322 OF 2015

MUSA SHITI SABABU.....PLAINTIFF

-VERSUS-

THE HON. ATTORNEY GENERAL.....1ST DEFENDANT

EDWARD MUNGAI KARIUKI (CHIEF RUAKA LOCATION).....2ND DEFENDANT

STEPHEN MBUGUA MUTURI (ASSIT.CHIEF RUAKA).....3RD DEFENDANT

JUDGMENT

1) Musa Shiti Sababu, the Plaintiff herein, sued the Hon. Attorney General, Edward Mungai Kariuki and Stephen Mbugua Mutiri, the 1st, 2nd and 3rd Defendants respectively vide the Plaint dated 15th September 2015 whereof he sought for Judgment as follows:

- a) An injunction restraining the 1st and 2nd Defendant from interfering with his quiet enjoyment of his suit premises.
- b) An order that he be put back into possession of his suit premises.
- c) An order that 1st and 2nd Defendants be ordered to rebuilt his said suit premises back to the place it was before they set it ablaze.
- d) In the alternative and without prejudice to the foregoing, the Defedants be ordered to pay for the costs of reconstruction and restoration of the “suit premises” to the condition it was in prior to setting it ablaze.
- e) General Damages
- f) Special damages
- g) Exemplary Damages
- h) Costs of the suit from the filling of this suit till payment in full
- i) Interest on a, b and c at Court rates
- j) Any other relied or orders the court may deem just and fit to grant.

2) The plaint and summons to enter appearance were served upon the Defendant but none entered appearance nor filed a defence hence the Plaintiff successfully applied for Judgment in default of appearance and defence. The suit therefore proceeded for hearing as a formal proof.

3) When this suit came up for hearing, the Plaintiff testified and summoned three independent witnesses to testify in support of his case. Musa Shiti Sababu (PWI) adopted the contents of his written witness statement as his evidence in Chief.

4) PWI stated that on 3rd July 2015 he was in Western Kenya when he received a call from one Duncan Murembuli informing him that Edward Mungai Kariuki, the Chief, Ruaka Location, Stephen Mbugua Muturi, the Assistant Chief, Ruaka Location, together with a mob had visited his house and set ablaze his house in Ruaka shopping center. He said he immediately travelled back and arrived at Ruaka the same day and reported what he was told to Gigiri Police Station.

- 5) He said on 4/7/2015 he was told to report about the burning of his property to Kiambu police station. He claimed that the Kiambu police station promised to investigate his complaint before recording his statement.
- 6) PWI further stated that on 6th July, 2015 while he was in his advocate's office, the Chief, his assistant and a group of women again visited his compound where Stephen Mbugua Muturi, the assistant Chief set fire on the remaining houses in his compound.
- 7) The Plaintiff said he together with his son and advocate rushed to Kiambu Police station where they met the OCPD and his Deputy and reported to them about the incident. PWI said the duo advised him to wait for them to make their report on what was happening at that time. He said he drove on his way back past his plot at Ruaka and confirmed that the remaining building had been completely blaze down.
- 8) PWI stated that as a result he lost his personal belongings and property together with those of his family members and tenants. He said he was forced to look for alternative accommodation.
- 9) He averred that he lost his business and source of income and was rendered destitute. He claimed that the Chiefs destroyed his house and property in the pretext of fighting illicit brew. He urged this court to find the Defendants liable for destroying his property and enter Judgment against them.
- 10) Claire Nasike (PW2), testified and adopted the contents of her written statement as her evidence in Chief. She stated that she used to live in the Plaintiff's house before the same was razed down by the area Chief and his assistant. PW2 said that on 1st July police officers in uniform accompanied by several young people visited the Plaintiff's plot which was locked. She said she saw them jump over the fence and forced the gate open and did a thorough search of the plaintiff's residence, the store tailoring room, tenants' houses and bathroom and toilets.
- 11) PW2 said the OCPD took away her two phones and left without taking anything from the compound. PW2 said that on 3rd July 2015, the area M.P, Hon. Koinage, the Chief and his assistant arrived and inquired from her where the illicit brew was kept. PW2 said that she saw a young man pour some liquid like petrol on sacks of maize, beans and sawdust. She said she witnessed the Chief strike a matchbox and burn the maize, beans and sawdust.
- 12) PW2 further averred that she saw the Chief also lit fire on the Plaintiff's store, tailoring shop, living room. It is said the Chief and the mob left when the Plaintiff's house was completely burnt. PW2 also claimed that the Chief and his assistant and some women came back on 6th July 2015 and set fire on the Plaintiff's remaining houses.
- 13) Judith Atamba (PW3) appeared and also adopted the contents of her written statement as her evidence in Chief. She stated that police from Kiambu police station visited the Plaintiff's compound accompanied by the area Chief and his assistant. PW3 said she saw them break the Plaintiff's gate before entering in search of illicit brew and she said that she saw the area Assistant Chief strike a matchbox and burn papers at the corner of the Plaintiff's timber house thus burning it before leaving.
- 14) Abunelly Mwash Ayieta (PW4) adopted the contents of the written witness statement as his evidence in Chief. PW4 said he was a tenant of the Plaintiff. He stated that on 3rd July 2015, he followed the area Chief and his assistant who were accompanied by women and young people into the Plaintiff's compound. PW4 said he was threatened and he had to run for his dear life. He claimed he saw smoke billowing from the Plaintiff's compound after 20 minutes. He said he called the Plaintiff to inform him about the fire. PW4 said that the following developments were inside the compound:

i) Family house

ii) Rental houses

iii) Tailoring shop

iv) Stock of maize, beans , rice and millet

v) Hardware shop, cement, iron sheets and paint

vi) Parking shade

vii) Bathrooms

viii) 2 bicycles

ix) 4 Wheel barrows

x) Small hotel

xi) Workshop

xii) Grocery shop

15) At the close of evidence, the Plaintiff's counsel was invited to file written submissions. At the time of writing this Judgment, no submissions had been filed. It is apparent that the Plaintiff has sought for orders of restitution or in the alternative to be paid damages. The main issue is whether the Plaintiff has established his claim to the required standards in the Civil cases.

16) The Plaintiff and his three witnesses testified and identified Edward Mungai Kariuki and Stephen Mbugua Muturi as the persons who personally participated in setting ablaze the Plaintiff's property.

17) In the Plaintiff, the plaintiff gave the particulars of special damages as follows:

a) Loss of 6 Sewing machines

b) Loss of 2 bicycles

c) Loss of 2- Wheelbarrows

d) Loss of 2 auto bumpers

e) Loss of 3 auto rims

f) Loss of 4 bags of maize

g) Loss of 34 bags of rice

h) Loss of 40 iron sheets

i) Loss of 24 ceiling cardboards

j) Loss of 6 flush doors

k) Loss of 2 bags of beans

l) Loss of bundles of clothes

18) It is the evidence of Abunelly Mwash Ayieta (PW4), which clearly shed light on the developments which were inside the Plaintiff's compound. PW4 listed the developments as follows:

i) Family house

ii) Rental Houses

iii) Shade for tailoring

iv) Store for maize, beans, rice, millet and finger millet

v) Hardware shop-cement, irons, paint

vi) Shade for parking vehicles

vii) Bathroom for tenants

viii) Family bathroom

ix) 2 – bicycles

x) 4 – wheelbarrows

xi) 2- water taps (1 at the front and at the back)

xii) Security lights

19) On a balance Probabilities I am satisfied that the Plaintiff has established his claim as against the 2nd and 3rd Defendants. The duo were placed at the scene i.e the Plaintiff's compound. They were seen by PW2 and PW3 personally lighting a matchbox to burn the Plaintiff's houses and properties in the pretext of destroying illicit brew.

20) The 2nd and 3rd Defendants abused their powers in performing their duties as Civil Servants. The law did not authorize them to burn the Plaintiff's houses and property. The duo actually committed the offence of arson and should have faced such a charge.

21) The police looked the other way and failed to record and act on the Plaintiff's complaints. The police acted with impunity thus allowing the 2nd and 3rd Defendants to commit illegalities in the name of fighting illicit brew.

22) Having found the 2nd and 3rd Defendants liable, the next question is what is the appropriate remedy for the Plaintiff. I have already stated that the Plaintiff sought for orders of restitution and or in the alternative payment of damages. I think the following orders appear to be appropriate in the circumstances of this case:

a) The 1st, 2nd and 3rd Defendants are jointly ordered and directed to rebuild the Plaintiff's premises to state they were before they were razed down or in the alternative, the Defendants should pay the Plaintiff a sum of Ksh 5,000,000/= being the estimated value of the properties burnt.

b) The Plaintiff to be paid general damages in the sum of Ksh. 2,000,000/=

23) The prayers for injunction appeared to have been overtaken by events hence the request is declined.

24) In the end Judgment is entered in favour of the Plaintiff and against the Defendant as proposed hereinabove. Costs of the suit is awarded to Plaintiff.

Dated, signed and delivered at Nairobi this 13th of December, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant

..... for the 3rd Defendant