



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 1432 OF 1997

MICHAEL HAMISI WABUNGO ..... PLAINTIFF NO.1

NATIONAL BANK OF KENYA LTD. ....PLAINTIFF NO.2

VERSUS

THE NAIROBI CITY COUNCIL ..... DEFENDANT

JUDGMENT

The plaintiff No.1 is an employee of the Plaintiff No.2. He borrowed a sum of almost Kshs.9 million to purchase a piece of land known as Nairobi LR 91/92 and charged the same in favour of the plaintiff No.2. He later constructed a dwelling house on giving a further charge using the same property.

This was sometime in 1993.

In 1997 the Nairobi City Council and defendant in this case gave him a notice of demolition stating that he had erected unauthorised structures. One of these structures being a perimeter wall around the property.

The Nairobi City Council actually came and demolished portion of the wall on the expiry of the 48 hour notice. The plaintiff came to court and sought an injunction after filing this suit.

The plaintiff later learned that on his piece of land there was a subsequent plan that revealed that portion of it near the river was apportioned and a new piece of land marked "H" was created together with a road.

The original plan he said did not contain this plan nor was he ever consulted on the formation of the said road reserve.

The defendant admitted the land all belong to the plaintiff but stated what they did was correct as the plaintiff was obstructing passage.

Further in order to build a wall there must be an approved plan. The plaintiff obtained no such plan.

The main plans for his house was also not within the council minutes as being approved.

It then transpired in the trial that the plaintiff had sued the Commissioner of Lands in another suit over the same property. The advocate for the plaintiff was unable to explain why the two suits were never consolidated save that there was a delay. He did inform the court the other case is coming in the month of March 1999.

Nonetheless it would have been prudent to consolidate the cases as the Nairobi City Council are operating on a legally drawn plan unless it is otherwise revoked which it has not been done.

I further find that the advocate for the plaintiff drew most of the instruments pertaining the said property. He ought not therefore to represent the plaintiff in the court that he may be called to give evidence.

The plaintiffs prayed for an injunction. There were two other prayers, one for the replacement of the damaged wall and another for General Damages.

None of this had been proved at the trial as to the costs incurred of the demolished wall.

I would nonetheless under my own motion grant an injunction, I would therefore stay these proceedings until the outcome of an earlier suit against the Commissioner of lands.

Dated this 11th day of March, 1999 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**