

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 3923 OF 1985

KIGIKA DEVELOPERS LIMITED APPLICANT

versus

NAIROBI CITY COMMISSION DEFENDANT

RULING

This is an application to strike out the defence filed by the City Council of Nairobi on the grounds that it discloses no valid defence to the plaintiff's claim.

The plaintiff company purchased a plot of land being LR 219/16 in July 1981. He wanted to develop this plot and borrowed substantial sums of money to enable it to do so. He submitted a development plan to the defendants as by law required.

The defendant failed to approve this plan on the grounds that it had excised some parts of the land and intended to exchange another plot of land for the land so excised.

This refusal of the defendants to approve the development prepared, caused the plaintiff company to lose a substantial amount of money and the question I have to decide is whether or not the defence filed by the defendants establishes any legal basis for the defendants refusal to grant the desired development approval.

I asked Mr Koge for the defendants to refer me to any legislative provisions which would authorise the defendants to refuse or delay the granting of the desired approval. He made no attempt whatsoever to justify the refusal or delay by citation of any legislative provision. I conclude that the defence discloses no valid defence to the plaintiff's claim. I am not prepared to give the plaintiffs judgment on its plaint. The matter must go for formal proof.

I order that the defence filed herein be struck out and the action should be set down for formal proof.

The plaintiff is entitled to its costs of the application.

Delivered at Nairobi this 14th day of October, 1986.

F SHIELDS

JUDGE