

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 304 OF 1982

FAZAL DIN SURAJ DIN PLAINTIFF

Versus

MWIRERI ESTATE LIMITEDDEFENDANT

JUDGMENT

Interlocutory judgment for the plaintiff has already been entered in this case by Platt J on March 6, 1982 for lack of appearance by the defendant and I am only concerned with assessment of damages.

By an agreement dated December 9, 1980 the plaintiff agreed to buy and the defendant to sell an 8 acre piece of land, Plot No 517/3, at Mwireri Estate together with the house erected thereon at a price of Kshs 80,000. The plaintiff paid the full price and Kshs 300 fee to an advocate and entered into possession on January 1, 1981.

On the May 7, 1981, the defendant, apparently assisted by the DC and the Police, turned the plaintiff out of possession and detained and/or concerted to their use some of his property. Thereafter they refused to put him back in possession or give him back his converted goods. The plaintiff seeks the return of his purchase price ie Kshs 80,000 plus the Kshs 300 legal fee. He is entitled to that and also to interest thereon from the date on which he parted with the money, ie December 9, 1980. The plaintiff also claims Kshs 40,000 for general improvements to the premises, ie painting, fencing etc. He is also entitled to that.

He spent Kshs 14,400 on furniture and curtains - I allow that claim too. He claims that he bought two dogs for the farm and bought them animal feed. He claims the cost of transport of the dogs (Kshs 1,000) and the animal feed (Kshs 3,388). I disallow that claim. The dogs were there for some five months and must have eaten the food bought for them.

The plaintiff also claimed several other items connected with expenditure on the farm eg petrol, wages, electricity bills etc. But it seems to me that was expenditure incurred whilst the plaintiff was in possession of the farm – after all he was there for some five months. He is not entitled – as he says – to all expenditure involved in moving into the farm and out again. He is only entitled to reasonable damages resulting from the trespass and conversion.

In the result I award the plaintiff damage as follows:

1. Kshs 80,300 plus interest at 12% per annum from December 9, 1980 till payment in full.
2. Kshs 40,000 for improvements.
3. Kshs 14,400 for furniture and curtains.

Items 2 and 3 will carry interest at 12% per annum from the date of the plaint till payment in full.

The defendant will pay the costs of this suit.

Dated and delivered at Nairobi this 2nd day of April, 1982.

EUGENE COTRAN

JUDGE