



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 8 OF 2018

COUNTY GOVERNMENT OF MOMBASAPLAINTIFF

VERSUS

SHANZU INVESTMENT LTD.....DEFENDANTS

JUDGMENT

1. The plaintiff filed this suit against the defendant by a plaint dated 22nd January 2018 seeking the following prayers:

1. **Special damages of Kshs.55,606,250/=.**
2. **Sale of PLOT NO.1MN/5794 AND 1MN/5795.**
3. **Costs of the suit.**
4. **Interest on (a).**
5. **Any other relief that the court may deem fit.**

2. The defendant who were duly served with summons to enter appearance and copies of the plaint did not enter appearance and/or file defence within the stipulated period. Pursuant to request for judgment made by the plaintiff on 22nd November 2018, interlocutory judgment was entered against the defendant on 6th November 2018. The matter therefore proceeded ex-parte.

3. It is the plaintiff's case that at all material times, the defendant was and still is the legal owner of the **PLOT NO.1 MN/5794** and **PLOT NO.1MN/5795** both situate within Mombasa. The defendant used to pay annual rates of Kshs.44,000/= and Kshs.49,720/= respectively for the two plots. The plaintiff avers that the defendant has failed to make payments for the past 11 years therefore earning excessive interest. The plaintiff further avers that the accumulated arrears and interest totals to Kshs.55,606,250 and that the default in payment has negatively affected the plaintiffs operations and is finding it difficult to meet its County budget. The Plaintiff states that it has tried all means possible including waivers to the defendant in an effort to have the debt settled but that the defendant has been uncooperative thus necessitating the filing of this suit.

4. The plaintiff called two witnesses, PW1 Jonathan Nyongesa the Head of Treasury at Mombasa County and a former Chief Officer, and Ezekiel M. Kiminza (PW2), a licensed auctioneer trading under the name and style of Autoland Auctioneers who was appointed to collect rates in respect to the two plots. It was their evidence that despite demand and proclamation of the said plots the defendant has failed to come forward or raise any objection.

5. In support of their case, they produced the following documents as exhibits:

1. a) **Certificate of postal search dated 3/12/18 FOR PLOT NO.5794/1/MN**
- b) **Certificate of postal search dated 3/2/18 for PLOT NO.5795/1/1MN**
2. **Copy of notice in the newspaper dated 30/6/17 for waiver of Land Rates.**
3. a) **Property rates statement for PLOT NO. 1/MN/5794**

b) Property rates statement for PLOT NO.1/MN/5795

4. Auctioneers license granted to Ezekiel Mutuku Kimina t/a Autoland Auctioneers.

5. Instructions letter dated 2/7/17

6. Copies of proclamations dated 26/7/17

6. The plaintiff's case is uncontroverted. I find that the plaintiff has made out a good case against the defendant and have proved it on a balance of probabilities.

7. I enter judgment in the plaintiff's favour as against the defendant as follows:

a) Kshs.55,606,250/=

b) Sale of PLOT NOS. 1MN/5794 and 1MN/5795.

c) Costs of the suit

d) Interest on a) and c) above.

It is so ordered

DATED, SIGNED and DELIVERED at MOMBASA this 13th day of February 2019.

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Mwanganya holding brief for Tutunga for plaintiff

No appearance for defendant

Yumna Court Assistant

C.K. YANO

JUDGE

13/2/19