



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1 OF 2011**

**KIDA TRADING AND SERVICES LIMITED.....PLAINTIFF**

**VERSUS**

**SUPPLIES AND SERVICES LIMITED.....1<sup>ST</sup> DEFENDANT**

**SIUMA TRADERS.....2<sup>ND</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**INSPECTOR GENERAL OF POLICE.....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff's claim is that the Government allocated it parcel numbers 209/1125, 209/11249 and 209/11520 ("the Suit Property") vide letters of allotment dated 14/3/1996. It subdivided these parcels of land and allocated the plots created to its members, who developed the plots either as residential or business premises. The Plaintiff claimed that on 12<sup>th</sup> and 13<sup>th</sup> December 2010, the Defendants descended upon the Plaintiff's members' property with a platoon of police officers with bulldozers and other machinery and turned it into rubble without giving notice. It averred that as a result of the destruction of its property, its shareholders had lost their sources of livelihood and gave particulars of the loss and damage suffered by 21 of its shareholders running into Kshs. 187,306,735/=. The Plaintiff averred that the 1<sup>st</sup> Defendant had trespassed on the Plaintiff's parcels of land and built a wall around the land.

2. Through the amended plaint dated 8/4/2015, the Plaintiff sought a declaration that the Defendants or their agents should be evicted from the Suit Property and that they should hand over the Suit Property to the Plaintiff. It also sought damages in the sum of Kshs. 186,206,735/= and compensation for the loss and damage suffered by its shareholders.

3. The 1<sup>st</sup> Defendant denied the Plaintiff's claim and averred that the parcels of land claimed by the Plaintiff were registered in the name of Kensalt Limited which is its sister company. The 1<sup>st</sup> Defendant averred that it had no control over the police who the Plaintiff alleges carried out the demolition of its member's property while urging that it is an independent law enforcement agency. It denied that the Plaintiff had suffered loss and damage as it claimed. It added that the Plaintiff had failed to draw any connection between it and the suit land.

4. James Kivindyo Mamayu gave evidence. He stated that the Plaintiff acquired parcel numbers 209/11125, 209/11249 and 209/11250 on 14/3/1996. It then subdivided this land into small plots which it allocated to its members, who went ahead and developed permanent and semi-permanent structures on it for residential or business purposes. He stated that the Plaintiff occupied the Suit Property without any complaint from the time the plots were allocated to it. Some of the Plaintiff's shareholders including the secretary called him on 11/12/2010 and informed him that the structures on the adjacent plot, known as Shirikisho were being demolished. When he went to the Shirikisho plot to find out what was going on, he was informed that the owner of the land had come to occupy his land and the residents of Shirikisho had been notified of this.

5. At about 3.00 a.m. on 13/12/2010, he received a call from the Plaintiff's secretary who informed him that tractors were demolishing the houses on the suit land from three sides under the watch of police officers who ordered people to leave their houses without carrying anything. He went to the scene and called the area Councillor. When they tried to inquire from the police why the demolitions were being carried out without the Plaintiff's members being given notice, the police threw tear gas at them and beat up people. The Plaintiff's officials resolved to report the incident at the Embakasi Police Station. He stated that the demolition went on until 14/12/2010 as the debris was being carried away by the 1<sup>st</sup> Defendant. The Plaintiff filed suit on 3/1/2011.

6. The Defendants objected to the Plaintiff's witness producing the photocopies of the documents while insisting that they wanted him to produce the originals. The Plaintiff's witness' response was that the original documents were destroyed by the fire during the demolition.

The witness produced various receipts and documents including ownership certificates issued by the Plaintiff to its members. The Plaintiff was incorporated on 21/3/1993. He did not have a copy of the application which the Plaintiff made for allocation of the suit land. He stated that the Plaintiff was allocated an unsurveyed industrial plot in Embakasi for which it made payment on 10/9/1996. He added that the Plaintiff instructed surveyors to survey the land but did not provide evidence to confirm that the land was surveyed. The Plaintiff's members did not have approved building plans. He confirmed that the Plaintiff had not processed titles for the land allocated to it. The witness did not have receipts to support the Plaintiff's claim for special damages. He explained that the receipts were destroyed during the demolition of the Plaintiff's members' houses.

7. He confirmed that the Plaintiff allocated land to its members before it paid the government the requisite fees for the allotment. The Plaintiff's members paid Kshs. 50,000/= each for a plot. He claimed that the documents showing the payments made by the members were destroyed during the demolition. When asked how the Plaintiff learnt of the availability of the land for allocation, he answered that the Plaintiff did a search and found out that the land was available for allocation. He later changed his evidence and told the court that the Plaintiff's chairman identified the land. He stated that they took possession of the land in March 1996. He claimed that the police protected those who were demolishing the buildings on the suit land. He confirmed that the Plaintiff's members did not have titles over the suit land. They did not obtain change of user of the land from the industrial purpose indicated in the letters of allotment to residential and business premises. He stated that the Plaintiff's office was destroyed during the demolition and everything was carried away. He maintained that the 1<sup>st</sup> Defendant demolished the plot adjacent to the Plaintiff and that he knew that the 1<sup>st</sup> Defendant had a court order to evict Shirikisho Group from that land. However, there was no court order for the demolition of the Plaintiff's land.

8. Stephen Mula Mwangangi also gave evidence for the Plaintiff. He claimed that the land adjacent to the Plaintiff's land was demolished by the 1<sup>st</sup> Defendant on 11/12/2010. He was in his house when the demolition on the suit land happened on 12/12/2010. He heard loud noises and ran from his house and realized that there was a gang of people throwing stones. He stated that there were about 30 uniformed police officers and almost 100 people who were throwing stones at anyone who approached the demolition scene. They tried in vain to show the police officers their letters of allotment. They reported the incident at the Mombasa Road Police Post. He stated that lorries carried away the soil excavated for almost two weeks. The Plaintiffs members had built various buildings on their parcels of land which were destroyed.

9. His evidence was that some of the Plaintiff's members identified the land before the Plaintiff applied to be allocated the land. He maintained that the suit land was surveyed and that they had deed plans which they lost during demolition. He claimed that he had put up two permanent building on his two parcels of land. He did not provide evidence of approvals for the development of the buildings on the land. He confirmed that they did not apply to the relevant authorities to change the user of the land from industrial to residential and business premises. He maintained that they paid for the allocation of the land and that the Ministry of Lands accepted their payment.

10. Joseph Karubi Ng'ang'a gave evidence for the Plaintiff. He produced a copy of the report dated 3/4/2014 giving the estimate for the construction work on plot numbers 150, 93 and 94 and a breakdown of the building costs. He confirmed that he prepared the report in 2014 but did not visit the Suit property. He based his estimates on the drawings the client supplied to him. He confirmed that he only prepared a bill of quantities for one person and could not tell whether the costs had been incurred or not.

11. The Defendants did not call any evidence. Parties filed submissions which the court has looked at. The issue for determination is whether the Plaintiff is entitled to the orders it seeks in the suit. The Plaintiff submitted that its members had lived on the Suit Property peacefully and enjoyed quiet possession from 1996 without anybody laying claim to the land. He claimed the Plaintiff's members' property was demolished under the watch of the police and aided by a group of goons. The Plaintiff urged the court to award its members damages amounting to Kshs. 265,971,729/= which included income lost up to November 2019 and personal effects. The Plaintiff maintained that the demolition of its member's buildings was unlawful and that its members were entitled to compensation from the Defendants.

12. The 1<sup>st</sup> Defendant submitted that the Plaintiff had failed to show that it had any proprietary interest in the suit plots and that it had not demonstrated that it was the proprietor of the suit land. It submitted that the Plaintiff had failed to prove the special damages it claims its members suffered as a result of the demolition. Further, that there was no evidence to show that the Plaintiff or its shareholders lawfully constructed on the land. It urged that there was no evidence of change of user of the suit plots from industrial to residential, or evidence of approval for the construction. It added that there was no evidence adduced to show that the 1<sup>st</sup> Defendant caused the eviction or that it evicted anyone from the suit land.

13. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants submitted that the letters of allotment relied on by the Plaintiff did not indicate the land reference numbers yet the Plaintiff lays claim to L.R. Nos 209/11125, 209/112249 and 209/11250. The Attorney General submitted that the Plaintiff had failed to prove its case on a balance of probabilities and urged the court to dismiss the suit adding that the Plaintiff had not proved any wrong doing on the part of the Defendants.

14. The Plaintiff did not lead evidence to show how the plots indicated in the letters of allotment as unsurveyed industrial plots were surveyed to become L.R. Nos 209/11125, 209/112249 and 209/11250. Even if the deed plans were destroyed during the demolition, the Plaintiff's members could have obtained certified copies of the survey plans and deed plans from the survey department which would confirm that the three plots which the Plaintiff was allocated were surveyed and given these numbers. There was no change of user from industrial to residential or commercial. There was no approval for the construction of the structures that the Plaintiff claims its members had erected on L.R. Nos 209/11125, 209/112249 and 209/11250. Had the Plaintiff legally subdivided the plots and allocated them to its members as it claimed then its members would have obtained titles in accordance with the law. In that case, the Plaintiff would cease to have any interest in the suit land once the subdivided portions were transferred to its shareholders.

15. The Plaintiff did not prove that it owned L.R. Nos 209/11125, 209/112249 and 209/11250. The suit is dismissed with no orders as to costs.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of December 2019.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. James Nyakundi for the Plaintiff

Mr. Boniface Masinde for the 1<sup>st</sup> Defendant

Mr. Allan Kamau for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Mr. V. Owuor- Court Assistant