



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC. CASE NO. 481 OF 2009**

**HAPPYLAND INN LIMITED.....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff, which owns the parcel of land known as L.R. No. 4894/187 (original number 4894/96/3) (“the Suit Property”) situated in Garden Estate, Nairobi, filed suit on 28/9/2009 seeking both a temporary and permanent injunction to restrain the Defendant or its agents, servants or employees from demolishing, destroying, evicting or interfering with the Plaintiff’s Suit Property. Additionally, the Plaintiff seeks special damages, general damages, costs of the suit and any other relief the court may deem fit to grant.
2. The Plaintiff claims that the Defendant sent its bulldozer and hired goons who went to the Plaintiff’s Suit Property on 23/9/2009 at 12.00 a.m. and demolished part of the Plaintiff’s perimeter wall. It claims that the people were taken to the Plaintiff’s premises in the Defendant’s motor vehicle registration number KAT 539X. The Plaintiff claims that the Defendant’s actions have interfered with its quiet enjoyment of the Suit Property which it had developed and that it was forced to spend colossal sums of money to construct the wall.
3. The Defendant was served but did not file a defence.
4. The Plaintiff called its Managing Director who gave evidence on 20/12/2017. He stated that the Plaintiff is a family owned company. He adopted his witness statement filed in court on 28/2/2012 in which he states that the Defendant hired goons who demolished part of the Suit Property’s perimeter wall using a bulldozer. He stated that he found the Defendant’s agents on the Suit Property and that they had been brought by the Defendant’s motor vehicle registration number KAT 539X.
5. He believes the Defendant’s actions were malicious. He produced copies of the indenture for the Suit Property, a copy of the Survey Plan, together with photographs of the demolished wall. He also annexed a copy of the architectural drawing which he maintains was approved by the Defendant. The court notes that the drawing is for a house and not the wall that is alleged to have been demolished by the Defendant.
6. Both parties filed submissions. The Plaintiff summarised the issues in the suit which the court adopts as follows: -
  - i. Did the Plaintiff obtain approval from the Defendant to construct the perimeter wall on the Suit Property?
  - ii. Did the Defendant, its servants, agents or employees demolish part of the Plaintiff’s perimeter wall on 23/9/2009?
  - iii. Were the persons who demolished the wall brought by the motor vehicle registration number KAT 539X?
  - iv. Does this motor vehicle belong to the Defendant?
  - v. Should the court grant orders sought in the plaint?
7. The Plaintiff’s Managing Director testified that the Defendant’s agents demolished his wall on 23/9/2009 at about 12.00 a.m. That would be at midnight and would have been dark. The witness did not lead any evidence to connect the Defendant to the demolition of its wall. He relied on photographs showing stones on the ground presumably where the wall used to stand. There is a lorry parked in front of the building in one of photographs whose registration number is not visible. It appears parked inside the compound as opposed to being on the road.

8. From the Plaintiff's photographs, it is not clear which of the structures shown in the photograph belong to the Plaintiff. Even though the Plaintiff produced a copy of the search of the motor vehicle showing that the Defendant owns motor vehicle registration number KAT 539X, it did not adduce evidence to show how this motor vehicle was connected to the demolition.

9. It is not in dispute that the Plaintiff owns the Suit Property. The Plaintiff produced a copy of the architectural plan for its house but did not produce evidence that it obtained the Defendant's approval to construct the perimeter wall on the Suit Property. The Plaintiff argues that the Defendant never issued an enforcement notice to demolish its perimeter wall. The court is unable to find that the Plaintiff obtained the Defendant's approval to construct the wall.

10. The Defendant filed written submissions in which it submits the Plaintiff is not deserving of a permanent injunction nor is it entitled to special and general damages since it failed to present concrete evidence that the Defendant carried out the demolition of its wall. The Defendant relies on the case of *Arnacherry Limited v. Attorney General* [2014] eKLR in which Lenaola J. (as he then was) restated that it is trite law that special damages and loss of profit must be specifically pleaded and they must also be proved on a balance of probability.

11. The court is inclined to agree with the Defendant that having failed to specifically plead and prove special damages; the Plaintiff's claim must fail. The court dismisses the Plaintiff's suit with costs to the Defendant.

**Dated and delivered at Nairobi this 12th day of June 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Mureithi for the Plaintiff

**Mr. V. Owuor- Court Assistant**

No appearance for the Defendant