



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO.491 OF 2015

SAMUEL E.O.BOSIRE PLAINTIFF

=VERSUS=

HON. ATTORNEY GENERAL DEFENDANT

JUDGEMENT

1. The plaintiff filed this suit on 4th June 2015 in which he sought special damages of Kshs.816,417/= together with interest and costs. On 17th May 2017, the Plaintiff was orally amended to introduce paragraph 5(j) being a claim for additional stand premium of Kshs.20,400/= bringing the total claim to Kshs.836,557/=.
2. The defendant did not tender any evidence in this case though a defence had been filed on 12th November 2015.
3. Sometime in 1990, the plaintiff made an application to the Commissioner of Lands seeking an allocation of Land for construction of a residential house. The Commissioner allocated him land and known as LR No.21723 at Kabete, Nairobi. A letter of allotment was subsequently given to the plaintiff who accepted all the conditions therein.
4. The plaintiff applied for grant in respect of the allotted land but it took long to process the grant. The grant was only processed after the plaintiff engaged the services of a lawyer who followed up the matter. A grant was finally issued in the plaintiff's favour upon payment of outstanding land rent and stamp duty.
5. Sometimes in June 2011, the plaintiff's attention was drawn to a controversy surrounding the parcel which had been allocated to him. The plaintiff sought clarification from the allocating authority as to whether the land allocated to him was available for allocation as at the time the allocation was made. The allocating authority wrote to him and informed him that his title had been revoked as the allocation had been done in error. He was asked to surrender the original title documents to facilitate refund of the fees paid.
6. The Plaintiff duly surrendered the original title and documents as requested on 4th July 2011. In spite of various letters he wrote to the allocating authority seeking refund, there has been no such refund or alternative allocation of land.
7. I have considered the evidence adduced by the plaintiff as well as the submissions filed by the parties herein. There is no doubt that the plaintiff had been allocated plot No.21723 – Kabate in Nairobi. There is also no doubt that the title to the said land was revoked. The only issue for determination is whether the plaintiff is entitled to refund of what he spent towards acquisition of the property.
8. By a letter dated 2nd June 2011, the plaintiff indicated to the Commissioner of Lands that he did not wish to be associated with the land in the issue owing to the controversy surrounding it. He offered to surrender title documents against refund of what he had spent in acquisition of the land. In a letter dated 14th June 2011, the Commissioner of Lands wrote to the plaintiff and asked him to return all original documents relating to the land to facilitate processing of a refund. The defendant submitted that the plaintiff is not entitled to any payment. The plaintiff had been assured that he was to be refunded what he had spent once he surrendered title documents. The defendant is estopped from denying that the plaintiff is entitled to refund of what he had spent. In the case of **Serah Njeri Mwobi Vs John Kimani Njoroge (2013) eKLR**, the court of Appeal held as follows:-

“ The doctrine of estopped operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person”.

9. The plaintiff proceeded to surrender the title vide a surrender document dated 11th July 2011. The plaintiff paid Kshs.247417/- on 11th September 1997. He was issued with receipt number D922559. This receipt covered amounts enumerated in paragraphs 6(a) – (h) of the

plaint. The Plaintiff was also asked to pay land rent amounting to Kshs.560,000/= to cover the period between 1.12..2009 to 31.5.2010. He paid Kshs.560,100/= and was issued receipt No.0228718 on 24.3.2010. The plaintiff also paid Kshs.8570 being stamp duty on 24.3.2010 . He was issued with receipt number 660440. On 10.9.2003, the plaintiff paid kshs.5,100/= and was issued with receipt No. F.460096. On 9.9.2003 the plaintiff paid Kshs.20,400/= by bankers cheque payable to the commissioner of lands. This amount was duly acknowledged by an official of the Ministry of Lands.

10. It is clear from the payments made as shown in paragraph 9 hereinabove that the plaintiff spent a total of Kshs.841,581/=. He has produced receipts to show that he paid the amount. The amount of Kshs.20,400/= was in bankers cheque payable to Commissioner of lands and was duly acknowledged by an officer at the lands office. The plaintiff however pleaded for Kshs.836,557/=. Parties are bound by their pleadings. A court cannot allow what was not pleaded even though evidence of the same is adduced as was the case herein. The plaintiff has been able to prove the amount he pleaded as required.

11. The plaintiff is seeking interest at treasury bill rates or such other rates as the court may deem fit and just to grant from the time the payment was made. I do not see any basis for granting interest at treasury bill rates. The payments made were made between 11.9.1997 and 24.3.2010. The issue of refund arose in June 2011. It will not be fair to order that interest be calculated from the date each payment was made. Considering the circumstances surrounding the revocation of the plaintiff's title I will grant interest at court rates to be calculated from 1st June 2011.

12. I therefore enter judgement for the plaintiff against the defendant as follows:-

a. Special damages of Kshs.836,557/=.

b. Interest on (a) above to be calculated from 1st June 2011 until payment in full.

c. Costs of the suit.

Dated, Signed and delivered at Nairobi on this 26th day of July 2018.

E.O.OBAGA

JUDGE

In the Presence of:-

M/s Anne Kadima for Mr Chacha Odera for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE