



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 62 OF 2017 (FORMERLY H.C.C.C No. 55 OF 2003)

AYUB MUTHURI IKIARA PLAINTIFF

VERSUS

COUNTY COUNCIL OF MERU.....DEFENDANT

JUDGMENT

1. The initial plaint was filed on 16.5.2003. Plaintiff was claiming that he was the owner of a developed plot which was on land parcel no. NKUENE/TAITA/420 situated at Nkubu Market. On 11.5.2003, he received a notice of intended demolition of his building to make provision for a six feet lane. He therefore filed this suit seeking injunctive orders restraining the then defendant from interfering with the aforementioned parcel of land, or in the alternative he prayed for compensation for damages in respect of the demolition.

2. Defendant filed a statement of defence on 18th June 2003 it is averred that the plaintiff is not entitled to the prayers sought in the plaint because the plaintiff had constructed his building contrary to the building plans. The particulars thereof as set out in paragraph 7 of the said statement of defence.

3. The plaint was amended on 8.3.2005 vide a court order of 3.3.2005, whereby the plaintiff was availing additional information to the effect that he is the registered owner of the plot no. NKUENE/TAITA/420 measuring approximately 0.02 ha. The plaint was further amended on 11.10.2013 vide a court order of 10.10.2013 whereby the plaintiff was substituting the county council of Meru with the County Government of Meru.

4. Plaintiff testified way back on 23.6.09. He also called a valuer as his witness. The defence however have never tendered any evidence from the time the plaintiff's case was closed on 3.3.2010.

5. On 13.7.2015 and on 3.11.2015 defence was given a chance to file their statements of witnesses and to give evidence but there was no compliance with such directions. On 29.2.2016 the court made the following orders:

“Defendant allowed 30 days from today to file compliance documents and if this is not done it will be deemed to have closed its case and the plaintiff will be at liberty to file and exchange his written submissions within 30 days of the expiry of the 30 days granted to the defendant to fully comply”.

6. Defendant never complied with the aforementioned directions and therefore plaintiff proceeded to file his submissions. Defendant was allowed to file their submissions on several occasions but even this direction was not complied with.

7. The court will therefore proceed to determine the issues in dispute based on the evidence adduced by the plaintiff.

8. In his evidence plaintiff testified that he is the sole registered owner of the suit land. To buttress this averment, he produced a land certificate as plaintiff exhibit 1. He avers that he bought the plot in 1977 from one Jackson Irungu. He developed the plot after acquiring building plans which plans were approved by the relevant bodies including, Meru District Physical Planning Officer and the District Health Officer.

9. Plaintiff stated that he was in peaceful occupation of his property where he was running a butchery, shops and eateries (eating places) until the time he received the enforcement notice from the Meru County Council on 11.5.2003, which notice was dated 12/5.2003. The notice was requiring him to provide space for lane expansion and he was also required to submit building plans for scrutiny and approval. The notice also stated that in the event there was no compliance within 7 days, his building would be demolished.

10. After receiving this notice, plaintiff engaged a lawyer and he sought redress in court. He was able to obtain an injunction restraining the defendants from demolishing his building pending the hearing of the main suit. Plaintiff avers that this order was duly served upon the defendants who still went ahead to demolish plaintiffs building on 10th June 2003.

11. Plaintiff decided to get a valuer who embarked on filing a valuation report and came up with a figure of Kshs.226,000 as the cost of the damaged property.

12. In support of his case plaintiff produced the following documents as his exhibits:

- (i) Plaintiff's exhibit 1 – copy of title deed no. Nkuene/Taita/420
- (ii) Plaintiff's exhibit 2 – Original sketch plan
- (iii) Plaintiff's exhibit 3 – A & B photographs
- (iv) Plaintiff's exhibit 4 – map
- (v) Plaintiff's exhibit 5 – order issued on 22.5.2003
- (vi) Plaintiff's exhibit 6 – county council minutes no. MCC/MIN/14/15/VOL.XII/110
- (vii) Plaintiff's exhibit 7 – bundle of documents (mostly receipts)
- (viii) Plaintiff's exhibit 8 – Valuation Report

Determination

13. I frame the issues for determination as follows:

- (i) Whether plaintiff owned the property known as NKUENE/TAITA/420
- (ii) Whether plaintiff's property was demolished and if so whether there was any justification for such demolition.
- (iii) What is the relief available?

Whether the plaintiff owned the property known as NKUENE/TAITA/420

14. The land certificate produced as plaintiff exhibit 1 indicates that plaintiff became the registered owner

of the suit land on 4.6.1981. No evidence has been adduced to challenge this piece of information. Exhibit 2 are building plans whereas exhibit 3 is a photograph of the plaintiff's building. I have no doubts that indeed plaintiff owns the land with the buildings thereof.

Whether the plaintiff's property was demolished and if so whether there was any justification for such demolition.

15. Plaintiff has invoked the provisions of S. 74 of the 1963 Kenyan constitution whereby in S. (2) it is provided as follows; ***“Every person having an interest or right in or over property which is compulsorily taken possession of, or whose interest in or right over any property is compulsorily acquired shall have a right or direct access to the high court for the determination of his interest or right, the legality of the taking of possession or acquisition of the property.....”***.

16. The documents produced as exhibit 2 are plaintiff's building plans which were apparently approved by the county clerk of the Meru County Council on 20.2.1992 as well as by the District physical planner on 20.1.1992. It is also apparent that the plaintiff did obtain a restraining order on 20.5.2003. 15 years down the line from year 2003 the defendants have never attempted to challenge the plaintiffs claim. If anything the defence statement appeared to be an admission that the demolition was justified.

17. As rightly submitted by the plaintiff it is trite law and a corner stone of all judicial systems of the world that court orders should be obeyed. The defendants have never given any plausible explanation or any explanation at all as to why they defied the court order of 22.5.2003.

18. No justification has ever been advanced as to why part of the plaintiff's building was demolished. If defendant was trying to compulsorily acquire plaintiff's land, then the provisions of the applicable law, particularly section 74 of the old constitution ought to have been complied with. If it was a question of plaintiff's non-compliance with the building plans, then defendant ought to have demonstrated the nature and extent of this non-compliance. I am inclined to believe that defendant was not justified in demolishing plaintiffs building.

What is the relief available?

19. Plaintiff is claiming damages to the tune of Kshs.226,000 as compensation for the demolition of his building. This figure is based on the valuation report (plaintiff exhibit 8). I have no reason to doubt that this is reasonable compensation. I therefore proceed to allow plaintiff's suit in the following terms;

(i) Judgment is hereby entered for the plaintiff against the defendant for the sum of Kshs.226,000 as compensation for the demolition of his building.

(ii) Plaintiff is awarded the cost of the suit plus interest thereof which interest shall run from the 60th day after the delivery of this judgment, to facilitate payment in terms of the judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH DAY OF SEPTEMBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Mmamu for plaintiff

Plaintiff

Defendant

HON. LUCY. N. MBUGUA

ELC JUDGE