



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 300 OF 2017

EDWARD KAMAU MUCHOKI.....1ST PLAINTIFF

FRANCIS MUCHOKI KAMAU.....2ND PLAINTIFF

VS

COUNTY EXECUTIVE OFFICER, MINISTRY OF

ROADS HOUSING & PUBLIC WORKS.....1ST DEFENDANT

THE MURANG'A COUNTY GOVERNMENT.....2ND DEFENDANT

JUDGMENT

1. By leave of the Court granted on 16/10/2017 the Plaintiff amended their plaint. In it they have sued the 1st and 2nd Defendant claiming that their agents (being a contractor awarded a contract by the Defendants) have illegally, unlawfully and without the Plaintiffs authority demolished and caused damage to their houses situated at Loc. 6/Kandani/204 (suit land). That this was during the construction of Gwa-Karweini, Kwa Ngururi Sabasaba River access road.

2. The Plaintiffs sought orders as follows:-

- a) That the 1st, 2nd, 3rd and 4th Defendants be ordered to pay for the loss incurred by the Plaintiffs amounting to Ksh.575,000/= caused by their illegal acts.
- b) That this Honourable Court be pleased to give any other relief that it deems fit and just to grant.
- c) That the Defendants do pay the costs and interest of this suit.
- d) The cause of action arose in Nairobi within the Jurisdiction of this Honourable Court.

3. The Defendant denied the Plaintiffs' claims through a defence filed on 23/10/2017. They contend that at no time did they or their agents or employees trespass onto the suit land. They also denied demolishing any houses on the suit land as well as the alleged damages by the Plaintiffs. They contend that if the structure was removed it must have been on the area reserved for the public access road.

4. At the hearing the Defendants and their Counsel were absent. The case proceeded exparte.

5. The 1st Plaintiff testified at the hearing and relied entirely on his witness statement filed on 26/3/2018. In his evidence he stated that he is the son of the 2nd Plaintiff. That on the 20/19/16 the 2nd Defendant in corroboration with the 1st Defendant together with the member of County Assembly (MCA) of Kahumbu ward awarded a contract to construct a road known as Gura-Karweni, Kwa Ngururi sabasaba River access road. That in the process the said contractor demolished their residential house without any notice or lawful cause thereby occasioning them loss and damage in the sum of Kshs. 573,000/=.

6. The witness informed the Court that he reported the demolitions damage and excavation to Muthithi Police Station whereby the incident was booked as OB 4/22/9/16. They have assessed the loss at Kshs 573,000/-

7. Both Parties have filed written submissions which I have read and considered.

8. The key issues for determination are;

- A. Who owns the suit land?
- B. Did the Defendants demolish the Plaintiffs houses?
- C. Are the Plaintiffs entitled to damages?
- D. Costs.

9. Section 24 (a) of Land Registration Act.

“the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.

10. Section 26 (1) & (2) of Land Registration Act.

“(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

11. The Plaintiffs have averred that the suit land is registered absolutely in the name of the 2nd Plaintiffs father and therefore family land. In Para 8 of the amended plaint they have pleaded that the 1st Plaintiff is the legal representative of the suit land. It is not clear what this refers to. That being the case the Plaintiffs have not adduced evidence to demonstrate ownership of the suit land to support a claim for compensation on account of damages.

12. Section 106 of the Evidence Act states as follows:-

“Nothing in this Part shall affect the law relating to the interpretation and construction of wills or other testamentary dispositions”.

The onus was squarely on the Plaintiffs to prove that they are the owners of the suit land. Neither a title deed nor an official search on the title was produced in Court. The Defendants have denied that the Plaintiffs owned the land and have contended that if there was a structure that was removed, then it was built on public access road. The Court is unable to find that the Plaintiffs are the legal owners of the suit land.

13. The Plaintiffs have averred that the Defendants through an unnamed contractor caused their demolition of their residential houses on the suit land. It is their case that the demolition was illegal, unlawful and without their knowledge nor consent. They further contend that the Defendants did not give them the requisite notice for them to vacate the suit land peaceably. That the Defendants also failed to carry out survey and mapping of the road before the commencement of the construction. They have incoherently argued that the Defendants could only be allowed to evict the Plaintiffs with a valid Court order after following due process and not otherwise.

14. I have perused the evidence of the Plaintiff and there is no evidence adduced proving that indeed their houses were demolished. They have annexed pictures which were however not produced in Court to authenticate that indeed they belonged to the Plaintiffs. The Plaintiffs would have produced a report to show the construction of the road, their dimensions, specifications in respect to the area and that houses were demolished in the process. No such evidence was led or report produced. The onus to prove the involvement of the Defendants also lay with the Plaintiff. The Plaintiff has accused a Member of County Assembly of Kahumbi ward, the Defendants and an unnamed contractor. There is no contract document to link the Defendants, the Member of County Assembly and the contractor to the construction, if any. It is difficult to determine who was responsible for the demolitions if any. No correspondences were tabled either.

15. The Plaintiffs have denied compensation in the sum of Kshs. 575,000/=. There is no valuation or assessment report to support the claim. In the case of **David Bagine V Martin Bundi CA No. (Nrb) 283/1996**, the Court of Appeal referring to Lord Goddard CJ in **Bonhan Carter vs. Hyde Park Hotel Limited [1948] 64 TLR 177** held that-

“It is trite law that the Plaintiff must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and so to speak, throw them at the head of the Court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.”

The onus to prove damages lay with the Plaintiffs. They have failed to do so. I find that no proof of loss of damages was availed to Court to enable it assess the loss and accordingly I proceed to dismiss the suit on the ground that it is baseless.

16. In the end the Plaintiffs have failed to prove their case. It is dismissed with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF OCTOBER, 2018.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Plaintiffs – Absent

Defendants – Absent.

Irene and Njeri, Court Assistants