



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 53 OF 2017

FORMERLY MERU ELC CASE NO.292 OF 2016

ANJERINA KARIMI MUTEGI.....PLAINTIFF

VERSUS

INTEX CONSTRUCTION CO. LTD.....DEFENDANT

JUDGMENT

1. In her plaint dated 22nd December, 2016 the plaintiff seeks judgment against the defendant for:

- a) General damages for pain, suffering and loss of her home.
- b) Special damages of K.shs 1,134,710/=
- c) Costs of the suit
- d) Interest on (a), (b) and (c) above.
- e) Any other or better relief that this Honourable court deems fit and proper.

2. The plaintiff claims that on or about the 30th day of April, 2016 while blasting rocks for use on the Chiakariga – Tunyai road which the defendant was tarmacking, the defendant negligently, carelessly and recklessly employed blasting machines and devices which vigorously shook her houses situated on her land parcel No. THARAKA/TUNYAI “A”/455 as a result of which her houses got seriously damaged and developed irreparable cracks on the walls and floors consequently rendering them uninhabitable.

3. As the defendant, despite proper service, had failed to enter appearance and file a defence, the plaintiff set down the suit for hearing.

4. PW1, the plaintiff, told the court that on 30th April, 2016, the defendant used blasting and other machines which destroyed her properties. She produced a notice signed by the defendant’s agent warning residents that blasting would take place on 30th April, 2015 and asking them to ensure their safety. She also produced a copy of a cheque for the sum of K.shs 328,905/= which the defendant, after admitting liability offered to pay her as compensation for the damage caused to her property. She also produced a valuation report made by Rima Valuers Limited, Licensed Valuers, estimating the loss she had suffered through the actions of the defendant as amounting to the sum of Kshs.1,109,310/=. The report also contained photographs showing the damage caused to the plaintiff’s property.

5. The plaintiff told the court that she was sleeping in her kitchen as the actions of the defendant had rendered her two houses inhospitable.

6. PW2 testified that he had witnessed the destruction wrought on the plaintiff's houses through the activities of the defendant.

7. I find that the plaintiff has proved her case to the standard required in Civil matters.

8. I grant the following orders:

1. The plaintiff is awarded the sum of Kshs 1,134,710/= as special damages itemized as follows:

a) Costs of repairing both houses Kshs 1,109,310/=

b) Valuation fee Kshs 20,400/=

c) Notice before action Kshs 5,000/=

2. The plaintiff is awarded the sum of Kshs.400,000/= for pain, suffering and loss of her home.

3. Costs of the suit and interest on 1 and 2 above at court rates are awarded to the plaintiff from the date of delivery of this judgment.

9. It is so ordered.

Delivered in open court at Chuka this 11th day of April, 2017 in the presence of:

CA: Ndegwa

Nyamu Nyaga h/b Kiautha Arithi for the plaintiff

P.M. NJOROGE

JUDGE