



**Kenya Construction Consortium Limited v Nairobi City County (Environment and Land Case Civil Suit 914 of 2014) [2015] KEELC 856 (KLR) (24 March 2015) (Judgment)**

*Kenya Construction Consortium Limited v Nairobi City County [2015] eKLR*

Neutral citation: [2015] KEELC 856 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 914 OF 2014**

**JM MUTUNGI, J**

**MARCH 24, 2015**

**BETWEEN**

**KENYA CONSTRUCTION CONSORTIUM LIMITED ..... PLAINTIFF**

**AND**

**NAIROBI CITY COUNTY ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff by its plaint dated 9<sup>th</sup> July 2014 and filed in court on the same date states that it was at all material times the registered owner of land parcel L.R. NO. 209/17486 measuring 1.03 hectares or thereabouts situated at Embakasi, industrial Area of Nairobi. The Plaintiff claims it was allocated the subject parcel of land which was in a cluster of 27 plots while the other twenty six (26) plots were allocated to other parties who are now the plaintiffs neighbours through the recommendation of Kenya Investment Authority about 17 years ago to promote and facilitate investment in the Republic of Kenya. The plaintiff claims that the allottees of the plots including the plaintiff have been unable to access their plots since the Nairobi City Council (now Nairobi City County has refused and/or neglected to provide an access road as the law requires.

2. The plaintiff seeks judgment against the Defendant for orders that:-

The Defendant was served with summons to enter appearance in the suit on 15<sup>th</sup> July 2014 as per the affidavit of service sworn by Ezekiel Mungai on 1<sup>st</sup> August 2014 and filed in court on 5<sup>th</sup> August 2014. The affidavit of service returns the duly acknowledged and stamped copy of the summons to enter appearance and plaint by the Deputy Director, Legal Affairs Department, Nairobi City County. The Defendant did not enter appearance and/or file any defence. The plaintiff on 7<sup>th</sup> October 2014 filed a Notice of Motion application seeking leave to be granted for entry of interlocutory Judgment against the Nairobi City County for



failure to enter appearance and/or file a defence. The application with a hearing date of 8<sup>th</sup> December 2014 served on the Defendant on 28<sup>th</sup> November 2014. The Defendant did not attend court on 8<sup>th</sup> December 2014 and the Deputy Registrar allowed the application and consequently interlocutory judgment was entered against the Defendant.

3. The matter was fixed for hearing before me on 12<sup>th</sup> February 2015 when the plaintiff was present but the Defendant though served with a hearing notice was absent. As the court was committed on that day the matter was adjourned for hearing the next day when the hearing proceeded by way of formal proof.
4. Pw1 Sammy Kimani Kungu, the managing Director and Chairman of the Plaintiff testified on behalf of the plaintiff. The witness relied on the witness statement filed in the suit and the bundle of documents as per the list of documents filed with the plaint on 9<sup>th</sup> July 2014. The plaintiff's claim is for the provision of an access road to serve his plot and the other investors plots. The plaintiff's evidence is that, Kenya Investment Authority facilitated the allocation of industrial plots out of L.R.NO.209/17486 Embakasi Industrial Area to a group of investors including the plaintiff. The plots were to be served by an access road as per the Part Development Plan (PDP). A Sketch Plan dated 4<sup>th</sup> June 1990 tendered in evidence by the plaintiff showing the site designated for industrial development.
5. The plaintiff testified that the Nairobi City County has neglected to develop and/or facilitate the development of the access road which has made it difficult for the plaintiff and its co-investors to develop their respective plots. The plaintiff testified that there is a railway crossing on the access road that requires to be constructed with the authority of both the Kenya Railways and the Nairobi City County. The Kenya Railways have given authority for the construction of the level crossing and have furnished the conditions required to be met by Nairobi City County to enable the works to be executed but the Nairobi City County have not fulfilled these conditions. The letter dated 25<sup>th</sup> October 2013 from Rift Valley Railways (Kenya) Ltd and the letter dated 4<sup>th</sup> November 2013 to Nairobi City Council both included in the plaintiff's bundle of documents, indicate the conditions that the Nairobi City County were required to meet.
6. The Plaintiff testified that there was no alternative road of access to the one the Defendant has failed to provide and as a consequence that has impeded the development of the plots by the investors occasioning losses to the plot owners. The plaintiff avers that the Defendant has a duty and responsibility to ensure the roads of access within its jurisdiction are opened up and maintained and that the Defendant's failure to have the access road serving the plaintiff's plot developed is hurting the plaintiff and occasioning damage to the plaintiff as it cannot utilize the plot for the purpose it was intended.
7. The plaintiff states that a Quantity Surveyor has prepared an estimate of the funds required to open up the road which amount to Kshs.5,435,500/- as per the estimates included in the bundle of documents. The Kenya Railways also assessed the cost of doing the level railway crossing at Kshs.1,365,143/25 as per the letter from Rift Valley Railways (Kenya) Ltd dated 25<sup>th</sup> October 2013 included in the bundle of documents. The plaintiff for its part claimed to have expended a total sum of Kshs.3.6 million in following up the matter including paying for survey and preparation of bills of quantities and payment of contractors. The plaintiff produced 2 receipts for payments marked as Exhibits 2(a) and (b) and sought re-imburement of these funds.
8. The court has reviewed the pleadings and the evidence by the plaintiff and accepts the evidence by the plaintiff that it was the beneficiary of a plot allocated by Kenya Investment Authority at the Embakasi Industrial Area. However the plaintiff did not tender any letter of allotment to show what the terms of the allotment if any were. The plots were not allocated by the Nairobi City Council or



the Commissioner of Lands and it is unclear what the terms indeed were. If it is Kenya Investment Authority who allocated the plots, it is not also clear whether the allottees were to be their lessees or not. The plaintiff has not indicated whether it pays any rent for the plot and if so to whom. The plaintiff has equally not shown whether as the plot owners they pay rates to the Nairobi County Government. The payment of rates to the Nairobi City County would place an obligation on the Defendant to provide services. From the evidence tendered by the plaintiff it is also not clear whether the allocation and consequent subdivision of the head title out of which the plots were carved was ever completed.

9. The evidence by the plaintiff raises questions whose answers have not been provided such as:-  
L.R. NO. 209/17486 before the alleged allocation of the plots?
10. I pose the foregoing questions because any subdivision scheme would normally be subject to terms which ordinarily would inter alia include the provision of services such as roads of access. If it was the Kenya Investment Authority that was facilitating the allocations as the plaintiff claims then the Kenya Investment Authority is the party who would have been expected to ensure all the services necessary for the plots were provided. Whereas it is true the City County Government would be expected to provide and maintain access roads where the access roads result from a subdivision it is the person carrying out the subdivision who is supposed to meet the cost of providing the access roads built up to acceptable standards before the subdivision scheme can be accorded final approval. Thus the obligation of the council would only arise to maintain the access roads after the initial cost of establishing them was met by the developers. It is for this reason residents and business plot owners are required to pay annual rates and pay approval fees for any developments in the plots.
11. In the premises therefore I am not satisfied that the plaintiff has proved its case on a balance of probabilities. The plaintiff's suit is for dismissal and the same is dismissed with no order as to costs.

**JUDGMENT DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF MARCH 2015.**

**J. M. MUTUNGI**

**JUDGE**

In the Presence of:-

..... For the Plaintiff

..... For the Judgment

