



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND COURT

ELC. NO 1144 OF 2013

SALIMA ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTYDEFENDANT

JUDGMENT

The Plaintiff instituted this suit against the Defendant by way of an Amended Complaint dated 4th December 2013 whereby it stated that it was the registered owner of L.R. No. 1870/IX/170 Westlands Nairobi (hereinafter referred to as the “suit property”). It further stated that in January 2010 the Defendant then known as Nairobi City Council expressed interest in buying the suit property but the sale fell through. However, the Defendant through some developers started developing the suit property sometime in June 2013. It further stated that the Defendant’s officers have together with the contractor totally blocked the suit property, fenced it off and denied the Plaintiff from accessing the area. It further claimed that it has been denied rent for the space and economic exploitation which it puts at Ksh 200,000/= per month and the suit property is currently valued at Ksh 325 Million. It states that the Defendant’s actions amount to forceful acquisition without compensation. The Plaintiff prays that the Court does enter judgment against the Defendant for:

- a. Mesne profits of Ksh 200,000/= per month with effect from 1st June 2013 till the Defendant vacates.
- b. An order of injunction restraining the Defendant, its servants, workmen, licensees, agents or any other person acting on its behalf from howsoever trespassing, entering, encroaching, remaining in, taking over, dispossessing, alienating, reclaiming and or harassing the Plaintiff or interfering with its peaceful; entitlement and possession of LR No 1870/IX/170 Westlands Nairobi.
- c. An order to pull down any structures erected by the Defendant on LR No 1870/IX/170 Westlands Nairobi at the Defendant’s costs.
- d. In the alternative the Defendant be compelled to compensate the Plaintiff Kshs. 325 Million or such other appropriate market value
- e. General damages, costs and interest thereon.

Upon service of the Complaint to the Defendant, the Defendant entered appearance but failed to file a defence to the Complaint. There is an affidavit of service filed in court on 23rd December 2013 sworn on 20th December 2013 by Kennedy Mugo, a process server, who deposed that he received the amended complaint from the firm of Kinyanjui, Kirimi & Company Advocates and served the same upon COOTOW & Associates who were on record for the Defendants and in particular he served Mr Wanyonyi Advocate who duly acknowledged receipt of the amended complaint by signing and stamping a copy of the pleading. At

the lapse of the prescribed time within which to file a defence, the Plaintiff requested for judgment in default of defence. The request was granted on 23rd January 2013, and the Plaintiff was directed to set the suit down for formal proof hearing.

The matter came up for formal proof on 25th March 2014 when PW1 Hanif Ali Gulam testified that he is one of the Plaintiff's directors and the owner of the suit property since 2009. He confirmed that he filed his witness statement on 25th September 2013 and wished to rely on it entirely. He testified that the Defendant had encroached and constructed on the suit property. He added that the Defendant had earlier on expressed interest in purchasing the suit property but they later withdrew their bid. He further testified that the Defendant later in June 2013 began developing the suit property without permission and in the process the Plaintiff was denied access to the suit property. He prays that this court grants then compensation for the value of the suit property. The reason he gave for his claim is that the Defendant is constructing a market marked as Westlands Market on the suit property. He further stated that he would not ask for the structure to be demolished but to be compensated as they were initially willing to sell the suit property to the Defendant. He stated that the Plaintiff has lost profits as the suit property can hold 35 cars as parking which is normally charged at Kshs. 200/= per day per car which adds up to Kshs. 7000/= per day and Kshs. 200,000/= per month. His prayer is that the Plaintiff be compensated with Ksh 325 Million being the market value of the suit property.

PW2 Kimani Mbugua Mkunga a valuer by profession working under the firm of Transcountry Valuers Limited stated that he had a professional experience of 4 years. He further stated that his company was given instructions to value the suit property on 12th November 2013 which he did and prepared a valuation report in which using the comparison method, he came up with the value of Kshs. 325 Million for the suit property. He added that the method entailed comparing the suit property with similar properties in the area.

The main issue before the court therefore is whether the orders of compensation by the Defendant to the Plaintiff should be issued. The court in this regard notes that this suit is undefended therefore the Plaintiff's evidence remains uncontroverted. The Plaintiff has in addition demonstrated ownership of the suit property by producing his certificate of title as his Exhibit No 1. The Plaintiff also produced as his Exhibit 2 the Certificate of search dated 19th March 2014 showing that the Plaintiff is the registered proprietor of the suit property. It is not disputed that there was a sale transaction between the Plaintiff and Defendant that fell through as this can be seen in a letter dated 27th January 2010 marked as exhibit 3 where it was stated that the Defendant could not conclude the sale process as they were still consulting. This shows that there were actually some negotiations between the two parties for the sale of the suit property. It is the Plaintiff's case that when the sale transaction fell through, the Defendant resorted to acquiring the suit property through compulsory acquisition without paying it any compensation. It is on this basis that the Plaintiff resorted to court action to compel the Defendant to compensate it by paying it the market value of the suit property which figure the Plaintiff placed at Kshs. 325 million.

In addition to that compensation, the Plaintiff wants this court to ask the Defendant to pay it *mesne* profit amounting to Kshs 200,000 per month since 1st June 2013 to date calculated as alluded to earlier.

The first issue that I must determine is whether the Plaintiff is the duly registered proprietor of the suit property. In support of the assertion that it is the duly registered proprietor of the suit property, the Plaintiff has produced to this court its original title document which is comprised in a Lease dated 1st August 1995 between the City Council of Nairobi and itself. On that issue, I find that the Plaintiff is indeed the duly registered proprietor of the suit property.

The second issue to determine is whether the Defendant has indeed trespass on the suit property and denied the Plaintiff access thereto. To prove that issue, the Plaintiff produced photographs showing that indeed the Defendant has taken possession of and has commenced construction on the suit property. I am satisfied that the Plaintiff has proved that it was dispossessed of the suit property by the Defendant.

The other issue I must determine is whether the Plaintiff is entitled to compensation for the said

dispossession and if so, what amount of compensation is reasonable. By virtue of being the registered proprietor of the suit property, the Plaintiff is entitled to be compensated for the loss of its property by the Defendant. The Plaintiff has requested for Kshs. 325 million which is the value assigned to the suit property by the Plaintiff's valuer, Transcountry Valuers Limited. The Valuer testified that this figure was arrived at after comparison of the suit property with similar properties in the neighbourhood. I consider that the value arrived at by Transcountry Valuers Ltd to be reasonable and do hereby concede to the Plaintiff. The Defendant is ordered to pay the Plaintiff the sum of Kshs. 325 million for the suit property.

The final issue I must address is whether the Plaintiff is entitled to *mesne* profits amounting to the sum of Kshs. 200,000/- per month from 1st June 2013 to date. To that, I find that the Plaintiff is also entitled to that sum of money to compensate it for the lost earnings from the suit property from the date the Defendant took possession thereof to the date of payment.

The upshot of the above is that Judgment is entered in favour of the Plaintiff as enumerated above. The costs of this suit shall also be borne by the Defendant.

DELIVERED AND SIGNED AT NAIROBI THE__4TH__

DAY OF _____ JULY _____ 2014

MARY M. GITUMBI

JUDGE