



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 281 OF 2010

TAITA RANCHING CO. LTD. PLAINTIFF

- VERSUS -

DIRIE & SONS CO. LIMITED. DEFENDANT

JUDGEMENT

[1] By an agreement dated 1st March 2007, the plaintiff granted the defendant grazing rights in its Ranch Reference Number 12264 comprising of 38040.4 hectares for a period of 3 years from 1st April 2007 at Kshs 75/- per head of cattle whereupon the defendant paid upfront Kshs. 450,000 grazing fee for 3 months. That the licence expired on 31st March 2010. It is argued by the plaintiff that on expiry of the licence the defendant refused to vacate and to hand over possession of the ranch. And that the plaintiffs attempt to have the defendant vacate was met with violent resistance. That it took the intervention of the DC's office Voi on 19th May 2010 whereupon the defendant undertook to remove his cattle from the ranch on or before 30th June 2010. It is averred that on 30th June 2010 instead of the defendant moving out its cattle, it proceeded to the magistrate's court in Voi and filed *PMCC No. 85 of 2010* for restraining orders. The said orders were not granted since the court stated that it does not have jurisdiction to hear land matters. The plaintiff averred that therefore the continued stay of the defendant on the ranch was illegal unlawful and unwarranted.

[2] The plaintiff states that acting on advice from the Ministry of Livestock it had decided to let the ranch lay fallow for at least two years to enable it to recover from the effect of devastating drought and over grazing in the past years. That in order to do so the plaintiff granted conservation easement on 28th January 2010 for a minimum period of 20 years to M/s. Wildlife Works Cabon Ltd at a minimum conservation payment of Kshs 2,000.000 per month. That the plaintiff further granted Wildlife Works Inc. an Eco- tourism rights vide an agreement executed on 27th February, 2010 at an initial consideration of Kshs 350,000 per month for the last 6 months which amount would increase 500,000 per month after the first six (6) months and a minimum payment of Kshs 4 million in respect of good will. That those agreements were subject to among other things that the plaintiff shall not review any cattle leases in the ranch during their agreement. Pursuant to those agreements the plaintiff claimed a total of Kshs. 10,100,000.00 as set out in para 10 of the plaint. Over and above that amount the plaintiff claimed a further Kshs 2 million as conservation easement fee.

[4] The defendant filed a counterclaim. It argued that prior to termination of the licence the parties had embarked on negotiations on extension of the same and that the plaintiffs agreed to extend the same for a period of three years. That as a result of the undertaking aforesaid the defendant continued to pay

rent awaiting of the formalization of the same by way of written undertaking in the form of lease or a licence. It argued that the plaintiff was instigated and enticed to evict the defendant by a third party. The defendant filed a counterclaim, that the defendant having agreed to extend the lease and having received rent due and continues to receive rents due is estopped from denying the same and seeking to remove the defendant from the ranch. It prayed for the plaintiff his servants and/or agents to be restrained from evicting the defendant and a declaration that the defendant is entitled to a peaceful and quiet enjoyment of the ranch.

[5] There is no dispute that there was an agreement between the plaintiff and the defendant to lease the ranch for grazing purposes to the defendants. There is equally no doubt that the said licence was to expire on 30th March 2010. The issue for determination is whether the lease was extended and whether there were any payments after March 2010. The licence granted herein was for three years. It did not have a renewal clause. The defendant claims that the license was extended by Edward Musamuli the chairman of the company. He produced a letter defence exhibit 1. The defendant had applied to the company for extension of time on 15th January 2010 a reply was sent to him on 7th April 2010 which said that the letter reached the company late after the AGM had resolved on 27th March 2010 not to to extend his licence as there were no provisions for extension for the same. The reply written by Edward Musamuli gave the defendant 21 days grace period to windup his business in the ranch and transfer his animals elsewhere.

[6] Whereas the Chairman of the Board of Directors has no power to transact business and overrule the Board, this letter shows that the defendant did not get the extension of lease as he alleges.

In a later letter dated 21st May 2010 by the Vice Chairman of the company he demanded payment for grazing fee for the months of May and June 2010 summing up to Kshs. 450,000 and Kshs. 1,092,000 grazing fee for goats and sheep that the defendants is allegedly to have kept on the land without permission of the plaintiffs.

The court is convinced that the licence to graze his cattle on the plaintiffs land expired on 31st March 2010. That the defendant held on the suit land. He did not pay any rent for the period he stayed on until the year 2013.

[7] All the receipts the defendant produced were payments into his own accounts. They were not for payment of rents. The prayers (a) and (b) in para 16 of the plaint are spent as the defendant has moved out of the premises. The defendant was supposed to pay Kshs 75 per head of cattle. When he entered the plaintiffs land. He paid an upfront deposit of Kshs 450,000/-. So the monthly payment was Kshs. 150,000/- If that figure is divided by Kshs 75 per head of cattle he was therefore paying for 2000 heads of cattle. This is the figure the court considers the defendant to have maintained at the firm. In regard to the rent in arrears, I, assess it as follows;

$$150,000 \times 8 \text{ months} = 1,200,000$$

[8] The plaintiff claims loss of conservation easement fee at Kshs. 2,000,000 per month for 20 years from 28th January, 2010. The plaintiffs knew that they had a licence with the defendants that was expiring in March 2010. Why then did they enter it on a conservation easement dating 28th January 2010? Why is the plaintiff claiming for loses in the month of January, February and March 2007 when the defendant was a tenant? This deal of conservation of easement was incapable of taking effect on 1st January 2010 as it alleges. This was a voidable document. I will therefore make no awards in this regard. I will grant the plaintiffs six months of Eco tourism fee at Kshs. 2,100,000.00 from April to October 2010 as per agreement. I am however unable to grant Kshs. 4,000,000/-goodwill which according to the agreement was supposed to be paid by either Wildlife Works Carbon Ltd or a third party Eco Tourism operator. I find the same more or less speculative.

[9] In the final analysis the plaintiffs suit is allowed in the following terms

a) Grazing rent 8 months 1,200,000.00

b) Six months Eco tourism fee 2,100,000.00

3,300,000.00

I also grant the plaintiffs costs of the suit.

Dated and delivered in open court at Mombasa this 6th day of November 2014.

S. MUKUNYA

JUDGE

6.11.2014