



**Okero v County Government of Nyamira (Environment and Land Appeal E012 of 2023) [2024] KEELC 1709 (KLR) (19 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1709 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND APPEAL E012 OF 2023**

**JM KAMAU, J  
MARCH 19, 2024**

**BETWEEN**

**MELLEN MAKORI OKERO ..... APPELLANT**

**AND**

**THE COUNTY GOVERNMENT OF NYAMIRA ..... RESPONDENT**

**JUDGMENT**

1. In the Amended Complaint dated 26/2/2022 in Nyamira chief Magistrate’s ELC Case No. 14 of 2021 the Appellant averred that she is the equitable beneficial and lawful owner of Plot No.137A in Keroka town, a subdivision of Plot No/137 since 2007 for which she has since diligently paid Rent since 1994. The same had been allotted to her by the defunct Town Council of Keroka. The Defendant, a County Government intended to demolish the Appellant’s buildings thereon and the Appellant moved the court for the following prayers:
  - a. A Declaration that the Appellant is entitled and is the equitable legal owner of the suit property.
  - b. The defendant be restrained whether by themselves, their servants or agents or persons from harassing, threatening, intimidating trespassing upon alienating, demolishing and in any manner demolishing, or in any manner interfering with the Appellant ownership of Plot No. 137A in Keroka Town.
  - c. Damages including special, general, compensatory, exemplary and punitive damages.
  - d. Costs of the suit and interest thereon at court rates.
2. The Appellant attached copies of Official Receipts to show the rents she has been receiving from the premises on the suit property.



3. Apparently, no Defence was never filed and the case proceeded to Hearing on 22/11/2022 where she said that Plot No. 137A was allotted to her father who gave the same to her mother and the latter gave it to her. She developed the same with 3 shops and 5 houses where she used to earn a total of Ksh. 15,000/= from the rents. She was awarded Judgment for Ksh. 2,360,000/= on 11/5/2013 made up as follows: -

Punitive Damages – Ksh. 1,000,000/=

Damages for alternative Accommodation Ksh. 360,000/=

4. The Appellant was aggrieved that she was not awarded aggravated and exemplary Damages and also for not being awarded General Damages for Trespass and she therefore filed an Appeal on 16/8/2023 on the following grounds: -

1. That the learned Magistrate erred in law and in fact by not awarding general damages for trespass.
2. That the learned magistrate erred in law and misdirected himself fundamentally in failing to make a finding that the appellant was entitled to aggravated and exemplary damages.

5. Neither the Appellant nor the Respondent addressed the court on the procedural irregularity in arriving at the Decision of the lower Court. Section 19 (2) of the *Environment and Land Court Act*, 2011 provides that:

"The Court shall be bound by the procedure laid down by the *Civil Procedure Act*."

6. The above provision is clear in its terms. The Stages of a Civil Case are as follows: -Pleading stage.Discovery stage.Pre-trial stage.Trial Stage.Post-trial stage.

7. In the Pleading stage, upon being served with the Plaint, the Defendant has 14 days to enter appearance and a further 14 days to file his Written Statement of Defence where the Defendant addresses the averments made by the Plaintiff, denies or admits specific allegations, and can raise any Defenses he may have. Should the Defendant fail to enter appearance and/or to file Defence, the Plaintiff then requests for Judgment in default before the Suit is set down for formal proof. If the claim is liquidated then Judgment is entered without necessarily hearing the case.

8. The proceedings herein were a mistrial as the court ignored very fundamental procedures when setting down the Suit for Hearing. By failing to adhere to the procedure laid down by the Civil Procedure Act and Rules, the proceedings amounted to a mistrial. There was a major step that was not undertaken. It is unfortunate that the Respondent fully participated in the proceedings until the trial court rendered its final Decision without raising this issue. At no stage of the said proceedings was the Defendant's Defence or lack of it ever mentioned and the prejudice suffered by the Respondent as a result was taken for granted. Looking at the entire record this court found it unfair that there was no evidence on record to show that any Defence was ever filed and if not, that interlocutory Judgment or Judgment in default was ever entered. Proceeding with the case as the Court did was very irregular and was a gross error on the part of the Court. In the premises, I set aside the Judgment of the Trial Magistrate in Nyamira chief Magistrate's Court Case No. ELC 14 of 2021 dated 11/5/2023 and order that the same be sent back for retrial before a different Judicial Officer.

**JUDGMENT READ AND DELIVERED IN NYAMIRA ON 19TH MARCH 2024**

**HON. MUGO KAMAU**

**JUDGE**



In the Presence of: -

Court Assistant: - Brenda

No Appearance for the Appellant

Ms. Moeche for the Respondent

