



**Walmart Limited v Ali trading as Syracuse-Wildlife House and Research Centre & another  
(Environment & Land Case 675 of 2017) [2024] KEELC 1661 (KLR) (18 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1661 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 675 OF 2017**

**MN GICHERU, J  
MARCH 18, 2024**

**BETWEEN**

**WALMART LIMITED ..... PLAINTIFF**

**AND**

**IBRAHIM MOHAMUD ALI TRADING AS SYRACUSE-WILDLIFE HOUSE  
AND RESEARCH CENTRE ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 2<sup>ND</sup>  
DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the two defendants.
  - a. An order of permanent injunction against the 1<sup>st</sup> defendant, his agents, servants, employees and any person under the control or direction of the 1<sup>st</sup> defendant from further developing, constructing, improving any buildings, structures, construction on L.R. Kajiado/Olekasasi/982, suit land.
  - b. An order to the 2<sup>nd</sup> defendant to issue a demolition notice of the building constructed on the suit land for failure to comply with the law.
  - c. General damages for loss of business, and
  - d. Costs of this suit.
  - e. Any other orders that the court may deem fit and appropriate in the circumstances.

This is as per the amended plaint dated 4/7/2017.

2. The plaintiff's case is as follows. It is a limited liability company incorporated in Kenya and the registered owner of L..R Kajiado/Olekasasi/983. On this land there is a guest home known as Nyati



Hills Cottages which has been in existence since the year 2011. The first defendant owns a neighboring land parcel known as Kajiado/Olekasasi/982 where a single-storey house had been constructed.

The two parcels are located in an area which borders Nairobi National Park and falls under a controlled development area within Ongata Rongai owing to its proximity to the park and Mbagathi river.

3. In the year 2012, the 1<sup>st</sup> defendant demolished and brought down a one storey building that had been initially constructed without the 2<sup>nd</sup> defendant's approval and began the construction of a new multi-storey building on L.R. No. 982 without an Environmental Impact Assessment License being issued by the 2<sup>nd</sup> defendant.

This construction caused both public and private nuisance as follows.

Firstly, it blocked the free flow of the river downstream thus disrupting movement of wildlife from Nairobi National Park in accessing the water body.

Secondly, the perimeter wall obstructed free movement of wildlife and blocked clear view to the park.

Thirdly, the building cast a shadow on the plaintiff's swimming pool preventing the sun from warming the water thus making the water uncondusive for swimming which has subsequently reduced the number of visitors at the plaintiff's cottages.

Fourthly, the windows to the 1<sup>st</sup> defendant's buildings are at a vantage point directly facing the plaintiff's swimming pool thus greatly violating the privacy of the plaintiff's guests while at the pool.

Fifthly, the first defendant's building has obstructed the plaintiff's view of Nairobi National Park thus negatively impacting on the plaintiff's use of the property.

4. Following the above mentioned nuisances occasioned by the 1<sup>st</sup> defendant, the plaintiff lodged a complaint with the 2<sup>nd</sup> defendant registered as Nema HQ/Kajiado 12/2/15/2122 and the 2<sup>nd</sup> defendant's Assistant County Director of Environment visited the site and wrote a report which was forwarded to the 2<sup>nd</sup> defendant. When the plaintiff requested for a copy of this report, the 2<sup>nd</sup> defendant did not comply. Even after making countless visits to the 2<sup>nd</sup> defendant's offices to follow up on the complaints, the 2<sup>nd</sup> defendant was uncooperative.

Further inquiring revealed that the 2<sup>nd</sup> defendant had marked the complaint as resolved while this was not the case. Ultimately, an employee of the 2<sup>nd</sup> defendant by the name Mbururia informed the plaintiff via email that the 1<sup>st</sup> defendant did not have an Environmental Impact Assessment Certificate and that a cessation order had been issued by the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant did not heed to this cessation order and continued with the construction while the 2<sup>nd</sup> defendant did nothing to enforce the cessation order.

5. The construction of the multi-storeyed has further inhibited the plaintiff in the enjoyment of its property in the following ways. There is a lot of noise and debris falling from the construction site to the plaintiff's land. This has endangered the longevity of the plaintiff's Kshs. 150 million investment on L.R. 983 and this immense loss would have been prevented if an environment impact assessment had been carried out. The 2<sup>nd</sup> defendant has abdicated its responsibilities as provided under the Environmental Management and Coordination Act.

Before filing this suit, the plaintiff did all it could to resolve the matter amicably. For example in January 2014 it engaged the firm of Kaka Kamau and Company Advocates to lodge a formal complaint to the Kajiado County Director of Environment and in 2015 it engaged its current firm of advocates to lodge a similar complaint. It is when all other efforts failed that the plaintiff filed this suit.

6. In support of its case, the plaintiff filed the following evidence.



- a. Witness statement by Sarah Wanjiru Munyua dated 24/2/2020.
  - b. Copy of title deed for L.R. Kajiado/Olekasasi/983.
  - c. Three copies of complaints filed by Pear Joeker, Ashitiva and Kaka Kamau Advocates dated 14/10/2013, 25/3/2015 and 8/1/2014 respectively.
  - d. Various correspondence between the plaintiff and the defendants and between Ashitiva Advocates and the 2<sup>nd</sup> defendant all on email.
  - e. Copy of letter dated 7/9/2015 to the 2<sup>nd</sup> defendant by the plaintiff's advocates.
  - f. An aerial view of the plaintiff's land.
  - g. Three (3) copies of photographs showing the construction complained of by the plaintiff.
7. The first defendant, through counsel on record filed a written statement of defence dated 27/10/2018 in which he generally denies the plaintiff's claim and then avers as follows.
- Firstly, he is the registered owner of the suit land which he acquired long before the plaintiff acquired L.R. No. 983.
- Secondly, he avers that there was no other building prior to the construction of the current multi-storeyed structure on the suit land.
- Thirdly, the first defendant denies breaching any procedural requirements before the commencement of the construction and states that he submitted the requisite application for approval together with the building plans and he was issued with the approvals by the County Government of Kajiado.
- Fourthly, the 1<sup>st</sup> defendant has invested heavily in the construction works which were complete at time of filing the defence on 2/10/2018.
- Fifthly, on 23/8/2017 the 1<sup>st</sup> defendant acquired the Environmental Impact Assessment Licence as required by the law. Such licence was not mandatory in regard to construction on ones property until the enactment of Legal Notice No. 149 of 2016.
- Sixthly, it is the plaintiff which in January, 2013 built a perimeter wall which encroached on the first defendant's property and discharged effluent waste into Mbagathi River as was confirmed by the 2<sup>nd</sup> defendant's officers.
- Seventhly, the plaintiff has not joined the county government of Kajiado in this suit, yet it is the authority mandated to approve the 1<sup>st</sup> defendant's development plans and for this reason the plaintiff is estopped from challenging the said development.
- Eighthly, the 1<sup>st</sup> defendant has prudently and diligently complied with the 30 metre distance from the riparian area since its construction is 35 metres away from the river.
- Finally, the tall boundary wall built by the plaintiff is responsible for casting of a shadow on the swimming pool and its property's vegetation cover is degraded and it is the plaintiff which has blocked the migratory route for animals. Since the construction is complete, the plaintiff's suit has been overtaken by events and should be dismissed with costs.
8. In support of his case, the first defendant filed the following evidence.
- a. Witness statements by Ibrahim Mohamud Ali and Sammy Wambugu Wathika dated 29/5/2019 and 31/3/2022 respectively.



- b. Copy of title deed for the suit land dated 12/3/2007.
  - c. Copy of letter of approval of building plan dated 4/1/2012.
  - d. Copies of approval building plans dated 21/4/2016.
  - e. Copy of Environmental impact assessment licence dated 23/8/2017.
  - f. Copy of complaint dated 5/10/2017 made by the plaintiff to Public Complaints Committee on Environment.
  - g. Copy of google maps screenshot for L.R. 982 and 983.
  - h. Copy of NEMA Certificate of Registration as an environmental impact assessment/audit expert dated 13/9/2013.
  - i. Copy of legal notice no. 149 dated 18/5/2016.
  - j. Copy of effluent discharge certificate dated 14/10/2016.
9. The 2<sup>nd</sup> defendant in a written statement of defence dated 8/10/2019 generally denies the plaintiff's claim then avers as follows. The first defendant undertook the construction of the project without an environmental impact assessment being undertaken.
- Secondly, the 2<sup>nd</sup> defendant supports the plaintiff and says that it is unlawful to construct on the suit land without the environmental impact assessment report but adds that a site visit revealed that the site was deserted and construction materials were strewn all over the place.
- Thirdly, some of the issues raised in the suit relate to wildlife and Kenya Wildlife Service should therefore have been joined in the suit.
- Finally, the second defendant concludes by saying that it issued a stop order to the first defendant which still stands and the plaintiff's suit against it ought to be dismissed with costs.
10. In support of its case, the 2<sup>nd</sup> defendant filed the following evidence.
- a. Copy of report on the inspection carried out on 6/10/2016 at the locus in quo.
  - b. Copy of improvement notice.
  - c. A bundle of email and social media communication.
  - d. Complaint lodged at the National Complaint Committee on Environment.
  - e. Copy of NEMA status report dated 10/1/2022 which says that on the date of the visit, construction had stalled and there were no violation of the Environmental Impact Assessment Licence No. 0044082 dated 23/8/2017.
11. At the trial on 7/12/2022 only the plaintiff and the second defendant adduced evidence. The first defendant did not call any evidence even though the case was adjourned to 22/2/2023 to accommodate him. Eventually, the first defendant's witness statement dated 10/1/2022 and a report accompanying it were admitted as evidence by consent.
12. It is only the first defendant's counsel who filed written submissions dated 6/9/2023. The counsel for the plaintiff and the second defendant did not manage to comply with the extended timeline of 31/1/2024. For this reason, only the first defendant's counsel's written submissions have been considered in this judgment. The issues for determination have been identified as follows.



- a. Whether the 1<sup>st</sup> defendant negligently carried on construction on L.R. 982 causing damage to the plaintiff's property namely L..R No. 983.
- b. Whether this court should award special and general damages for negligence, nuisance and interference to the plaintiff's quiet and peaceful occupation of its property.
- c. Whether the plaintiff's suit subject matter is overtaken by events.
- d. Who should bear the costs of the suit.

13. I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and testimonies at the trial. I have also considered the written submissions by the counsel for the 1<sup>st</sup> defendant including the law cited therein. I make the following findings on the issues identified by learned counsel for the 1<sup>st</sup> defendant.

On the first issue, I find that no damage was proved to have been occasioned to the plaintiff's property by the first defendant. The visits by the officers of the second defendant to the locus in quo did not reveal any such damage. Had there been any damage, it would have been pointed out by the plaintiff to the officers of the second defendant.

In any case, the plaintiff did not adduce any evidence to prove loss of business occasioned by the 1<sup>st</sup> defendant's construction. No records to show the occupancy at the plaintiff's facility before and after the construction were ever pleaded or proved. While I agreed with the first defendant's counsel that under Section 58 (1) of the Environmental Management and Coordination Act, no environmental impact assessment licence may be required where the housing development does not exceed 30 housing units, I disagree with him when he says that in this case, there were less than 30 units.

In his witness statement dated 29/5/2019 which runs into four (4) pages the first defendant did not say anything about the number of units that he was constructing. Worse still, he did not appear in court to testify even though he was given ample opportunity of doing so.

There is therefore no evidence on the number of housing units in the project that he was undertaking. In the absence of tangible evidence I agree with the report of the inspection carried out on 6/10/2016 by the second defendant that such a report was necessary. This finding has covered the second issue and for avoidance of doubt no general or specialized damages have been proved for reasons already given.

14. Regarding the third issue, I find that the plaintiff's suit has not been overtaken by events. I do not believe the first defendant when he says that the project is complete. He chose not to come to court and testify on this aspect. He has not attached any pictures of the completed project. To contradict the 1<sup>st</sup> defendant's averments is a report dated 10/1/2022 showing that the project stalled at second floor. I believe this report is a correct assessment of the state of the project.

The report further states that;

...There were no violations of the licence observed at the time of the inspection”.

Coming to the prayers sought in the plaint, I find that no order of injunction should issue as per prayer (a) of the plaint because the second defendant is satisfied that the first defendant is no longer in breach of the licence unlike before. As for demolition, again there would be no justification because the building is now presumably compliant with the law but the second defendant is always at liberty to issue the requisite notice should it not so comply. As for costs, I order that each party bears its own.

It is so ordered.



DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 18<sup>TH</sup> DAY OF MARCH  
2024.

M.N. GICHERU

JUDGE

