



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njeru & another v Nairobi City County (Environment & Land Petition  
E009 of 2020) [2024] KEELC 4413 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4413 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E009 OF 2020**

**MD MWANGI, J**

**MAY 23, 2024**

**IN THE MATTER OF ENFORCEMENT OF RIGHTS AND  
FUNDAMENTAL FREEDOMS  
UNDER CHAPTER FOUR ARTICLES 22 AND 23 (1) AND (3)  
OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 40, 43  
AND 47 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF LAND ACT**

**AND**

**IN THE MATTER OF COMPULSORY ACQUISITION OF PLOT  
NOS. C61 & C66, KARIOBANGI SOUTH / KCC VILLAGE**

**BETWEEN**

**SILAS JACKSON NJERU ..... 1<sup>ST</sup> PETITIONER**

**FLORENCE GATAVI NJERU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**NAIROBI CITY COUNTY ..... RESPONDENT**



## JUDGMENT

1. The Petitioners in their petition dated 1<sup>st</sup> September 2020 jointly pray for;-
  - a. A declaration that the Petitioners' protected right to property has been violated by the Respondent's acts of encroachment onto, trespass upon and damage to the Petitioners' property.
  - b. A declaration that the encroachment onto, trespass upon and expropriation of the Petitioners' property known as Plot C66 & Plot C61 Kariobangi South/KCC Village within Nairobi County (hereinafter referred to as 'the suit properties' by the Respondent for the construction of a fire station without just cause and adequate compensation is unfair, unlawful and unconstitutional.
  - c. An order compelling the Respondent to adequately compensate the Petitioners for the loss and damage suffered as per the report of the sectoral committee on planning and housing.
  - d. Costs of this petition.
2. The 1<sup>st</sup> Petitioner testified as a witness on behalf both Petitioners adopting the supporting affidavit in support of the petition and the annexures thereto as his evidence in chief and the supplementary affidavit sworn on 20<sup>th</sup> April 2021 and a further one sworn on 10<sup>th</sup> August 2023.
3. The witness told the court that the sectoral committee on planning and housing of the County Assembly of Nairobi recommended that they be compensated as tabulated in the petition. The witness confirmed that he was subsequently allocated a plot measuring 80x40 feet as part of compensation.
4. In cross examination by the Advocate for the Respondent, Mr. Nyakoe, PW1 testified that he obtained the suit properties after an advertisement in the Newspaper and through a competitive exercise. He was subsequently issued with allotment letters dated 7.1.2002 signed by the Town Clerk of the Nairobi City Council then. His building plans were duly approved. Approvals were issued on 30.1.2014.
5. The witness further testified that he was in the process of putting up a five (5) storey building which he had built up to the 4<sup>th</sup> storey. He too had installed machines at the basement. The building was to serve as both commercial and residential premises.
6. The plaintiff stated that he was seeking compensation of Kshs.60,000,000/= as recommended by the Committee of the County Assembly of Nairobi. The said sum of Kshs.60 million was for the damage occasioned by the alleged demolition exclusive of the plots.
7. By the consent of the parties, the replying affidavit sworn by Jane Eric Odhiambo was admitted as evidence for the Respondent without calling the maker.
8. In the said replying affidavit, the deponent deposes that the facts relied on by the Petitioners in the petition are utter falsehoods that are malicious, degrading and only meant to portray the Respondent as an institution that does not obey the law.
9. The Respondent denies having leased plots C66 & C61 Kariobangi South KCC to the Petitioners and maintains that the attached allotment letters are forgeries and were never authorised by the Respondent nor its predecessor, the City Council of Nairobi. The deponent affirms that Kariobangi South/KCC land was at all times reserved as public utility. It is land that was never available for allotment to any individual. Further, that the Petitioners merely trespassed onto the suit land and erected thereon illegal



and unauthorised structures in total disregard of planning laws. The Respondent as the planning authority had every right to remove them without any notice to the Petitioners.

10. In regard to the annexures in support of the Petitioner's allegations the deponent asserted that they were forgeries. He gave an example of Annexures SJN2, 3 & 4 purported to be on the letterhead of an entity known as 'Nairobi City Council' instead of the 'City Council of Nairobi'.
11. The deponent was categorical that the annexed minutes from the County Assembly of Nairobi have no relevance to this case. The County Assembly is not a planning authority and had no business to deal with the matter as purported.
12. The Petitioners cannot purport to claim damages from the Respondent while all the particulars of damages are neither here nor there. The  
Petition should be treated with the contempt it deserves.

### **Court's Directions**

13. Court directed parties to file written submissions. Both parties complied. The court has had the opportunity to read and consider the submissions  
Filed which now form a part of the record of the court.

### **Issues for Determination**

14. Having considered the petition and the supporting affidavits and the replying affidavit of the Respondent, the testimony of the 1<sup>st</sup> Petitioner before the court, and the submissions filed by the parties, the issues for determination in this matter are: -
  - a. Whether the Petitioners have established the alleged violations of their rights by the Respondent;
  - b. Whether the Petitioners are entitled to the reliefs sought in their petition; and
  - c. What orders should issue with regard to the costs of the petition.

### **Analysis and Determination**

15. The issues in this matter are rather straightforward. Though the Respondent in its replying affidavit denied that the Petitioners' owned the suit properties, it subsequently went ahead and compensated them with a plot. They are waiting to be compensated for the second plot. The subsequent actions of the Respondent during the pendency of this case defeats their denial. Their action of compensating the Petitioners is tantamount to an admission of the Petitioners' claim of encroachment onto, trespass upon and expropriation of the suit properties.
16. Though the Petitioners allege that they had put up a building of the plots they have not presented sufficient evidence in support of the said allegation. The photos marked as SJN 8 & 11 are not accompanied by a certificate of electronic evidence. It is therefore not clear who took the photos and whether the said photos are in respect of the suit properties in any event.
17. The Petitioners further sought to rely on the alleged minutes of sectoral committee on planning and housing of the County Assembly of Nairobi in support of their case. First and foremost, the minutes are not certified. Secondly and as the Respondent asserted in its replying affidavit, they are irrelevant and of no value to the plaintiff's case. There was no evidence presented before the court that they were



indeed adopted and ratified by the whole Assembly. The minutes are internal documents unlike the Hansard which is a public record.

18. In respect to the Petitioners' prayer for an order compelling the Respondents to adequately compensate them for compulsorily acquiring their plots and damages for the loss and damage suffered, the court notes that the Petitioners, in their own admission have already been compensated for 1 plot by allocation of another plot. The court directs the Respondent to compensate them for the 2<sup>nd</sup> plot either through the allocation of another plot or through monetary compensation after a valuation by a government valuer.
19. Regarding the claim for Kshs.66,800,914/- tabulated at paragraph 28 of the Petitioners' supporting affidavit the same being a claim for special damage is unsupported by any material evidence. Special damages need not only be specifically pleaded but also strictly proved.
20. This is an issue that has been extensively addressed through case law. Addressing a situation where a party merely listed special damages without proof and expected the court to allow them as in this case, the Court of Appeal in *Capital Fish Limited v Kenya Power and Lighting Company Limited* (2016) eKLR, stated that:

“The appellant apart from listing the alleged loss and damage, it did not... lead any evidence at all in support of the alleged loss and damage. As it were, the appellant merely threw figures at the trial court without any credible evidence in support thereof and expected the court to award them. Indeed, there was not credible documentary evidence in support of the alleged special damages.”

21. In the case of *David Bagine v Martin Bundi* [1997] eKLR, the Court of Appeal cited the judgment by Lord Goddard CJ. in *Bonham Carter v Hyde Park Hotel Limited* (1948) 64 TLR 177, where he had stated that:

“Plaintiffs must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.”

22. In the case of *Union Bank of Nigeria PLC v Albaji Adams Ayabule & another* (2011) JELR 48225 (SC) (SC 221/2005 (16/2/2011)), Mahmud Mohammed, JSC. delivering the judgment of the supreme court of Nigeria stated as follows:

“I must emphasize that the law is firmly established that special damages must be pleaded with distinct particularity and strictly proved and as such a court is not entitled to make an award for special damages based on conjecture or on some fluid and speculative estimate of loss sustained by a plaintiff.... Therefore, as far as the requirement of the law are concerned on the award of special damages, a trial court cannot make its own individual arbitrary assessment of what it conceives the plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.”

23. The Petitioners in this case literally threw the figure of Kshs. 66,800,914/- at the court claiming it to be the extent of the damages suffered as a result of the alleged demolition of their building by the Respondent without offering any proof. They did not present any credible documentary



evidence in support of their claim for Kshs. 66,800,914/-. Consequently, I disallow the claim for Kshs. 66,800,914/- in its entirety.

24. The Petitioners' claim therefore only succeed partially to the extent that court directs the Respondent to compensate the Petitioners for the 2<sup>nd</sup> plot either through the allocation of another plot or through monetary compensation after a valuation by a government valuer in the next 60 days.
25. I grant the Petitioners the cost of this petition.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2024.**

**M.D. MWANGI**

**JUDGE.**

In the virtual presence of:

Mr. Mwalimu for the Petitioners

Mr. Nyakoe for the Respondent

Yvette: Court Assistant.

