



**Clairmont Investment Limited v China Communication Construction – Company Limited  
(Environment & Land Case 82 of 2019) [2023] KEELC 825 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 825 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 82 OF 2019  
MN GICHERU, J  
FEBRUARY 16, 2023**

**BETWEEN**

**CLAIRMONT INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**CHINA COMMUNICATION CONSTRUCTION – COMPANY  
LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff's claim against the defendant for the following.
  - (a) Kshs 19, 027.775 with interest from the date of filing of the suit until payment in full.
  - (b) Loss of profit/neutral value of Kshs 150, 000/= per month from January, 2019 until payment in full.
  - (c) General damages for trespass.
  - (d) Exemplary damages.
  - (e) Costs of the suit.
  - (f) Any other or further relief the court may deem fit in the interest of justice.
2. The plaintiff's case is as follows. It owns land reference No Kajiado/Kitengela 16766 which measures 0.3400 hectares. In the year 2016, the defendant trespassed into the plaintiff's land and built a septic tank and open sewage treatment pits. All this happened without the authority of the plaintiff.  
  
Had the plaintiff leased the property to the defendant or any other person, the rental income would have been Kshs 150,000/- per month. The land would be currently valued at Kshs 12, 500,000/- if it had not been rendered valueless by the defendant. The plaintiff now claims the amount of Kshs 19, 027, 775 comprised of the following.



- (i) Current market value of Kshs 12, 500, 000/-.
  - (ii) Disturbance at 15% of the value Kshs 1, 875, 000/-.
  - (iii) Loss of profit/rental at Kshs 150,000/- per month from July, 2016= 4,500,000/- to December 2018.
  - (iv) Valuation charges = 152, 775
- Total..... = 19, 027, 775/-.
3. In support of his case, the plaintiff filed the following evidence.
- (a) Witness statement dated February 6, 2019.
  - (b) Copy of title deed dated August 18, 2011.
  - (c) Copy of valuation report dated January 18, 2018.
  - (d) Copy of receipt dated January 18, 2018 for Kshs 152, 775/-
  - (e) Witness statement by Julius Mwangi Mugo.
4. The defendant, through counsel on record filed a written statement of defence dated March 1, 2019 in which it denies all the averments in the plaint.
5. In support of its defence, the defendant filed the following evidence.
- (i) Valuation report dated September 14, 2021.
  - (ii) Bernard M Nzau's annual practicing certificate for the period January 1, 2021 to December 31, 2021.
  - (iii) Bernard M Nzau's certificate of registration dated September 29, 2004.
6. At trial on January 17, 2022, the plaintiff called one witness by the name of Julius Mwangi Mugo who adopted his witness and another one named Dominic Mutua Muoka who produced the valuation report. The two witnesses supported the plaintiff's claim as per the plaint.
7. On the other hand, the defendant called Barnard Nzau who disputed the valuation report by the plaintiff's witness.
- According to Mr Nzau, the following are the valuation details for the land.
- (i) Value of the suit land Kshs 6, 000,000/-
  - (ii) Value of the land occupied by the abandoned septic development and concreted areas of the property Kshs 3,000,000/- .
  - (iii) Rental value of the abandoned septic development and the concreted areas of the suit property Kshs. 40,000/-.
8. Counsel for the parties filed written submissions on February 11, 2022 and May 26, 2022 respectively. I have carefully considered the evidence adduced by both sides as well as the submissions on record. I have also considered the law cited in the submissions. I make the following findings.
- Firstly, I find that there are two conflicting reports by the plaintiff's valuer and the defendant's valuer. Faced with the two conflicting, reports, I will go by the one with the lower figures. The plaintiff should



have filed a third report after being served with the defendant's report. This was the only way to preponderate his case after its report was disputed by an expert.

Secondly, the plaintiff has not proved that as at the date of the trespass by the defendant on the suit land, he was ready and able to build apartments that would have fetched him Kshs 150,000/- per month. He has not shown that he had the resources to undertake such a project. He has not exhibited approved plans by the relevant authorities for the project. He has not stated how long the project would have taken. He would have been entitled to such a claim if the defendant had demolished an apartment on the suit land that was fetching Kshs 150,000/- per month.

Thirdly, it is not disputed that the defendant trespassed onto the suit land constructed the infrastructure complained of.

Fourthly, neither the plaintiff nor the defendant has adduced the crucial evidence of the duration of the trespass.

Consequently, I award the plaintiffs the following.

- (a) Kshs 3,000,000/= being the value of the land occupied by the abandoned septic development.
- (b) Kshs 1,440,000/- being the value of lost rent for a period of 3 years at the rate of Kshs 40,000/= per month.
- (c) Kshs 300,000/- for trespass.

Total Kshs 4,740,000/=.

The plaintiff will also have the costs of the suit.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

**JUSTICE M.N. GICHERU JUDGMENT ELC NO. 82/2019 3**

