



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO 3151 OF 1997

LOMINGO OLE KINYI PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL.....DEFENDANT

JUDGMENT

In this suit the plaintiff claims a sum of shs162,490 as special damages, and a separate item as general damages, arising from a cause of action which consisted in the defendant City Council of Nairobi demolishing the plaintiff's commercial *kiosk* at Limutet Lane off Nyangusii Road at Umoja One Estate, in Nairobi, where the plaintiff carried on a petty grocery business, under licence.

The facts are not in dispute that the plaintiff had such a *kiosk* on the aforementioned premises; that he ran a business there since 1976 till March 12, 1997; that on the latter date the defendant demolished the said *kiosk*, razing it to the ground. Although it was initially denied by the defendant, the Court was satisfied on the evidence of the plaintiff, that he held trading licences issued to him by the defendant over the years, under which the plaintiff operated his business. I accept this fact because while admitting demolishing the *kiosk*, the witness called for the defendant did not say that the demolition was due to lack of a trade licence, but because the *kiosk* stood on a plot which did not belong to the plaintiff.

Although the defendant's witness said that the defendant had given the plaintiff a notice of an intended demolition, no copy of such a notice was shown to the Court at the hearing. The plaintiff denies ever having been given prior notice of demolition. There is no good reason not to believe the plaintiff on this aspect.

Since the demolition was a sudden operation without prior notice of it given to the plaintiff, the plaintiff was not prepared for it, and he could not have taken anything of his out of the *kiosk* to give room for the demolition. I say so, because the defendant's witness said in evidence that the defendant's agents or employees did not try to ascertain what was inside or around the *kiosk* and to take an inventory of what was found there, before they embarked on the demolition expedition. The failure by the defendant to make an inventory points to a recklessness and negligence with which the defendant went about its work. If the defendant's employees or agents themselves did not care to spare some reasonable or any time at all to take an inventory or some record of what they found at the premises before embarking on demolition, it is not probable that they could allow the plaintiff to mobilize help to clear the *kiosk* or even to salvage anything at all by himself.

From the evidence of the plaintiff and of his witness, taken together with that of the witness called by the defendant, the Court gets a clear picture of what happened when the demolition squad arrived, sent by the City Council of Nairobi (as admitted by the defendant's witness). The squad was haughty, and with a supercilious disregard or curtness about the possessions of the plaintiff in and around the premises. Completely incautious, they went about their assignment with an attitude of the devil-may-care. So, nothing could be saved.

The plaintiff's evidence that he carried out his business at those premises for many years during which period the defendant gave him the go-ahead, cannot be sensibly disputed. Annual licences were issued by the defendant to the plaintiff every year; and even at the time of the demolition a current licence was in force. Then, what went into the defendant's head to demolish the premises after issuing the annual trade licence for the year during which the demolition took place"

The defendant's witness said in evidence that the demolition took place because the *kiosk* was on a different plot of land. The problem with this answer is that the defendant did not name the different plot, did not provide the other plan to show the relation of the other plot to the *kiosk*. In addition, the defendant did not explain why, then, it had been issuing trade licences for many years and yet it knew or ought to have known the location of the *kiosk*. Further, the defendant must have known of the construction of the *kiosk*, and should have turned away the plaintiff, or after the building of the *kiosk* and it was found to have been built on a wrong plot, no licences should have been issued in respect of it all these years. The Court does not get any justification for the demolition which was undertaken and accomplished by the defendant in the circumstances of this case.

On the whole the defendant's action was wrongful. The defendant is liable in damages.

The special damages said to have been suffered in the sum of Shs.162,490, were not proved, probably because the defendant damaged or caused to be lost records and properties which were on the premises. In the absence of evidence of what was in the *kiosk* and any records relating to stock-in-trade or earnings and expenditure, it is not right for the Court to guess or pluck a figure from the heavens and assign it a label as special damages.

There is no way for the Court to verify what the plaintiff pleaded as his special loss. For this reason, the court refuses to award the sum quoted by the plaintiff as his special damages. With regard to general damages, the Court views seriously the cavalierly off-hand manner in which the defendant destroyed the plaintiff's business which it had licenced the plaintiff to carry on. As a business man the plaintiff obviously suffered loss. The witness for the defendant acknowledged that the demolition squad found property of the plaintiff in the *kiosk*. I am satisfied that the plaintiff was not allowed to save his property, including the structure materials for building the *kiosk*, and whatever else that must have been the stock-in-trade.

In his evidence, the plaintiff said without contradiction, that he had operated the business at those premises since 1976, with the defendant annually licensing the operations, and the plaintiff paying the requisite licensing fees of shs 4,000 every year for each licence issued.

It is agreed, on the evidence of the plaintiff's witness and that of the witness called by the defendant, the demolition squadron struck in the morning after it had rained during the previous night. The place, says the defendant's witness, was muddy, and people gathered there to see the demolition. With gatherings such as these in such a situation, one cannot completely rule out the chance of some property getting lost. Having been established in that business at that place for that long, the plaintiff must have suffered a big loss when he was suddenly thrown out.

Considering all these things as a whole, the Court considers that a fair and reasonable compensation to the plaintiff in general damages is an award of a sum of shs400,000 (four hundred thousand shillings).

Accordingly, there shall be judgment for the plaintiff against the defendant in the sum of shs400,000 in general damages. The defendant shall pay the plaintiff the costs of this suit. The defendant shall pay interest on those sums, at the rates of the Courts from the usual appropriate dates. It is decreed accordingly.

Dated and delivered at Nairobi this 3rd day of April, 2003

R.C.N. KULOBA

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JUDGE



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