



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA.

ELC CASE NO. 103 OF 2016.

MARGARET ODHIAMBO NELIMA.....PLAINTIFF

VERSUS.

MINISTRY OF INDUSTRY, TRADE &

CO-OPERATIVES.....1ST DEFENDANT

THE LAND REGISTRAR BUNGOMA COUNTY.....2ND DEFENDANT

THE NATIONAL LAND COMMISSION.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT.

[1]. The plaintiffs case against the defendants is that on or around 2015 and 2016 the first defendant carried a joint exercise at Malakisi Town and purported to be an adjudication pannel of land for the benefit of the local people the plaintiff included. That a survey was carried out on 18/8/2006 and the County Governor, Bungoma did issue title deeds to Local people in line with the president's directive on 2013 that the people of Malakisi would be granted ownership documents to the parcels of land they were occupying. She states that though the title was called out for collection at the Barasa, it was not released to her. That she went to the Bungoma Land Registrar and the County Surveyor offices at Bungoma who showed her the title deed but refused to release the same to the plaintiff citing orders from above.

[2]. The 1st defendant has in the meantime fenced off the plaintiffs land and erected a gate upon it and stationed guards at the same. She avers that she has been deprived of her land without any notice and/or compensation of the same. The plaintiff prays for an order of injunction against the defendants, their agents servants and/or those claiming through them from interfering with the plaintiffs use of LR No. Malakisi/Township/396 and for an order that the 3rd defendant do release plaintiffs title No. Malakisi/Township/396 or in the alternative the defendants do compensate the plaintiff at the current market value of Land compulsorily taken from her.

[3]. The defendants who were duly served with pleadings and the requisite hearing notices did not file any response and did not attend the hearing.

[4]. When this case came up for formal proof on 5/3/2018, the plaintiff, told the court that land parcel Malakisi Township/396 is hers. That it belonged to her father in-law and that the same ancestral land. That her father in-law died in January 2000 and that by the time he died, the lands were not adjudicated and that adjudication was done Later in 2007 and that she was registered in 2010.

She said that she came home and found her boma which she left standing in the morning was not there and in its place was a fence of the Ministry of Industrialization. It had been demolished by the 1st defendant. The Ministry has put a processor of Soya Beans. The plaintiff said they have talked to her but have not compensated her. She said that her Land was 0.2 hectares. She said that those who went to where the title deeds were being called out to collect their title deeds heard her name being called out. She followed her title to Bungoma and was told that the documents were under lock and key and that she could not be given her title. She stated that she made a demand on 5.11.2013 and her letter was not replied to. She said that the value of her land was 9.2 million and produced a valuation by Dunhill Africa Valuers Ltd to that effect dated 30/11/2012. She said that her house was brought down and she lost all the things in the house. Her husbands grave was also demolished. She produced her identity card a list of all Malakisi beneficiaries as plaintiff Exh. No. 1 and 2.

She produced the receipt which each beneficiary was supposed to pay for title deed for the plot for Kshs.3,500/= A copy of the official search for LR No. Malakisi/Township/396 as PExh. 4. Valuation of Dunhill Africa Valuers dated 30/11/2016 as PExh. 5. A Letter of the Ministry of Industrialization dated 5/9/2016 and the Original Map of the area.

The plaintiff states that when her house was demolished, her relatives were there and did nothing. That, that was a show of hostility and that is why she is looking for compensation for her family and children and move away from the area.

[5]. This land was registered in the name of the plaintiff as LR No. Malakisi/Township/396. The plaintiff was included in the list of those people who were affected by compulsory acquisition in Malakisi. This is also evidenced by a receipt issued to her for purposes of Communal Survey exercise that determined the acreage of land of each affected persons. The valuation of the plaintiffs land was Kshs.9,200,000/=.

The defendants have not complied with the Sec. 107(1) and Sec. 111(1) of the Land Act No. 6 of 2012 Sec. 111(1) states as follows;

Sec 107(1) states:

“Whether the National or County Government is satisfied that it may be necessary to acquire some particular land under Section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.”

Sub Section 111(1) states that;

“If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.”

The government is therefore in breach of the mandatory requirement of the Law. The plaintiffs Constitutional right under article 40 47(1) and 50(1) of the constitution of Kenya 2010 has been breached by the 1st defendants taking of the plaintiffs land, pulling her house down and building on it a Soya bean processor and by fencing it off and putting a guard on the same without compensation to the 1st defendant.

[6]. The plaintiffs claim has not been opposed or controverted in any way by the defendants who were duly served with the pleadings and hearing notices. The valuation of the land has also not been challenged. The land has already been taken over by the Government through the 1st defendants. A Soya bean processor has already been put on the suit land. I presume the said processor is installed for the Public good. It should not be destroyed.

However, the law requires the land owner not only to be notified but also to be compensated. The plaintiff prefers compensation and gives the reason that the neighbours and relatives have turned hostile to her. I will therefore grant the plaintiff her alternative prayer and order that the 1st and 3rd defendant do pay the plaintiff Kshs.9,200,000/= as the value of compulsory acquisition of her Land plus costs of the suit.

It is so ordered.

Judgment read In open Court before Mr. Ipapu.

Dated at Bungoma this 28th day of March, 2018.

S. MUKUNYA

JUDGE.

In the presence of:

Joy: Court clerk

Mr. Ipapu for Mr. Ashioya for the Plaintiff

N/A for the defendants