



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 236 OF 2017

SHEKUE ISSA ALI.....PLAINTIFF

VERSUS

MWANAISHA ISSA.....DEFENDANT

RULING

This court has perused the Valuation Report by the County Valuer, Kilifi, Lamu and Tana River Counties which is dated 14th October, 2021, and that by M/s Ultimate Valuers dated 9th July, 2021. In the decree of the court dated 26th May 2021, the court ordered that;

- a) That the Plaintiff and the Defendant be and are hereby directed to appoint a Joint Independent Valuer to value the residential house and pit latrine constructed by the Defendant on the suit plot which measures 46.5ft by 52ft on the larger parcel of land known as MN/III/3842 CR 3337 at Mtwapa, to determine the fair market value of the said structures within Sixty (60) days.
- b) That should the Plaintiff and the Defendant fail to agree on a Joint Valuer within Sixty (60) days herein, the Government Valuer, Kilifi County is directed to carry out the said valuation and file a report in court within One Hundred and Twenty (120) days from the date of the judgment herein.
- c) That Plaintiff shall pay the Defendant the amount arrived at in the valuation and the Defendant will upon receipt of such payment vacate the suit plot which measures 46.5ft by 52ft on the larger parcel of land known as MN/III/3842 CR 3337 at Mtwapa.
- d) That the Plaintiff and the Defendant herein shall share the costs of valuation referred to in paragraphs (b) and (c) above.
- e) That each party shall bear its own costs of the suit herein
- f) That the matter shall be mentioned after 120 days to confirm compliance and for further directions.

It is on record that, parties herein failed to agree to jointly appoint an independent Valuer as provided in clause (a) of the decree of the court dated 26th May, 2021. On the 20th September, 2021, the suit came for mention to confirm compliance with the decree of the Court during which the Plaintiff's Counsel sought for more time to have valuation conducted by Government Valuer as per the decree of the court. The honourable court ordered that the valuation be done within Thirty (30) days. The Valuation Report by the County Valuer, Kilifi, Lamu and Tana River Counties which is dated 14th October, 2021 pursuant to the Decree dated 26th May, 2021, and the Order of the court made on the 20th September, 2021, the County Valuer, Kilifi, Lamu and Tana River Counties visited and inspected the Defendants developments on the suit plot on 13th October, 2021. He, vide a report dated 14th October, 2021, did value the developments by the Defendant on the suit plot at Kshs. 480,000.00, particularized as follows;-

- i) Soak pit Kshs. 200,000.00
- ii) Roof structures Kshs. 150,000.00
- iii) Permanent house extension (without roof).... Kshs. 130,000.00

His report was filed in court on the 8th November, 2021.

The Valuation report by M/s Ultimate Valuers dated 9th July, 2021. This report was filed in court on the 24th November, 2021. In this

report, M/s Ultimate Valuers indicated that the value of the Defendant's developments on the suit plot at Kshs. 1,100,000.00. They added a further Kshs. 165,000.00 which they referred to as "disturbance allowance" to the Kshs. 1,100,000.00 to arrive at a sum of Kshs. 1,265,000.00.

I find that the decree is clear in clause (b) that if the Plaintiff and the Defendant did not agree on a joint valuer then the Government Valuer would do the valuation. It is clear from the decree that of the Two (2) valuation reports before the court, the one drawn by the County Valuer, Kilifi, Lamu and Tana River Counties which is dated 14th October, 2021, is the valuation report before the court which complies with the decree of the court. For the reasons, the valuation report by M/s Ultimate Valuers cannot stand. The court will rely on the valuation report by the County Valuer, Kilifi, Lamu and Tana River Counties which is dated 14th October, 2021 as per the decree, in which report the value of the Defendant's developments on the suit plot were assessed at a total of Kshs. 480,000.00. The Defendant is at liberty to appeal against the judgement and/decreed at the Court of Appeal as this court is now functus officio.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22ND DAY OF FEBRUARY 2022.

N.A. MATHEKA

JUDGE