



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
ENVIRONMENT & LAND COURT
JUDICIAL REVIEW CASE NO.10 OF 2013
SAHAJANAND SPARES CORNER LIMITEDAPPLICANT
VERSUS
LAND ACQUISITION & COMPENSATION TRIBUNAL.....1ST RESPONDENT
THE COMMISSIONER OF LANDS.....2ND RESPONDENT

J U D G M E N T

1. INTRODUCTION

(a) Sahajanand Spares Corner Limited, the Exparte Applicant, through Notice of Motion dated 23rd April 2013 prays for the following orders:

" 1. **AN ORDER OF PROHIBITION** prohibiting the Respondent his officers or agents or any other person or entity acting under his authority from implementing any award made under the Land Acquisition Compensation Tribunal as purportedly constituted under the Land Acquisition Act (Cap 295) (repealed) in purported compensation for the compulsory acquisition of the Applicant's parcel of land namely **KISUMU/KASULE/4487 and KISUMU/KASULE/4488**.

2. **AN ORDER OF CERTIORARI** to remove this Honourable Court to be quashed the proceedings and decision of the respondent, his officers or agents or any other person or entity acting under his authority to a purported award on compensation for the compulsory acquisition of the Applicant's said parcel of land namely **KISUMU/KASULE/4487 and KISUMU/KASULE/4488** which awards was purportedly made on the 11/7/2012.

3. **AND ORDER OF MANDAMUS** compelling the Respondent his officers or agents or any other person or entity acting under his authority to compensate the Applicant for the compulsory acquisition of its said parcel of land namely **KISUMU/KASULE/4487** and **KISUMU/KASULE/4488** under the provisions of the Land Act (Number 6 of 2012) and not the Land Acquisition Act (Cap 295) (repealed).

4. That this Honourble Court do proceed to make such other or further orders that it may deem apt in the circumstances.

6. That costs of these proceedings be catered for."

The application is based on five grounds set out below:

" 1. The Respondent has purported to award compensation for the compulsory acquisition of the Applicant's said parcels of land in July 2012 under the Land Acquisition Compensation Tribunal as constituted under the Land Acquisition Act (Cap 295) whilst the said Act had already been repealed in May 2012 and thus had no force of law it being non-existent at the material time save as repealed Act.

2. That in view of the repeal of the Land Acquisition Act (Cap 295) Laws of Kenya by the Land Act 2012 in May 2012 the appeal to the Land Acquisition Compensation Tribunal could not possibly lie as the said Tribunal no longer existed in law.

3. The Respondent's said awards are therefore Whimsical, Arbitrary, Illogical, Unreasonable, Capricious, Illegal, Irrational, Ultra Vires, Null and Void and are an Utter and Blatant abuse of power.

4. That the Respondent's actions are thereby Unlawful, Improper in Law and in fact, amount to an act of Utter Bad Faith and Ineptitude, Malicious, Oppressive and Utterly unjust to the applicant.

5. That the reliefs sought herein can only be obtained before this Honorable court by virtue of these proceedings."

(b) The application is supported by the statement of facts dated 21st March, 2013 and verifying affidavit sworn by Naresh Kumar Rambhai Patel on 21st March 2013 which had been filed with the Chamber Summons for leave. The leave to file the notice of Motion was granted on 10th April 2013. To the verifying affidavits are annexed copies of title deeds and registers for land parcels **KISUMU/KASULE/4487, 4488 and 3794**, hereinafter referred to as the suit lands showing that the Exparte Applicant became the registered proprietor of the said parcels on 25th February 2010

(c) The application is opposed by the Land Acquisition Compensation Tribunal and Commissioner of Lands hereinafter referred to as the 1st and 2nd respondent, through the replying affidavit of Elias Gitari Rwigy, sworn on 14th October 2013. The deponent states at paragraph 11 and 14 that the land parcels **KISUMU/KASULE/4487 and 4488** were registered in the names of Stephen Okello Okumu and not the complainant (Exparte Applicant). However the deponent did not annex the source documents from the Land Registrar office to support his claim.

The deponent annexed copies of the gazette notice number 8753 and 8754 for the intention to acquire the various parcels of land and the scheduled meetings for the inquiries. The said gazette notices dated 23/7/2010 indicated that the three suit lands were registered in the names of Stephen Okello Okumu.

(2) By Chamber Summons dated 24th September 2014, the Exparte Applicant applied to have the Chairman, National Land Commission enjoined in the proceedings. The application was granted on 29th September 2014. There is however no indication whether the National Land Commission was served with the Notice of Motion dated 23rd April 2013 and order enjoining it as a Respondent. The affidavits of service by Michell J.B Menezes and Dominic Ouma Olang, both sworn on 10th April 2015 are about service of hearing notice dated 2nd April 2015 only.

3. The Exparte Applicant then filed a further affidavit sworn by Naresh Kumar Rambhai Patel on 4th November 2014 in response to the replying affidavit. The deponent indicated that though the Exparte Applicant had bought the three suit lands from Stephen Okello Okumu and became the registered proprietor on 25th February 2010, the Respondents did not involve them in the acquisition process and only issued them with an award on 11th July 2012, which they declined.

4. The counsel for the parties agreed to file written submissions in respect of the notice of Motion when they appeared before the court on 15th April 2015. Consequently the Exparte Applicant's Counsel filed their submissions dated 7th May 2015 while the Respondents counsel filed theirs dated 9th June 2015
5. The issues for determination are as follows:
 - (a) Whether the acquisition process of land subject matter of this proceedings were done under the Land Acquisition Act, Chapter 295 of Laws of Kenya (now repealed) or the Land Act No.6 of 2012.
 - (b) Whether the Respondent followed the due process in the acquisition of the three suit lands.
 - (c) Whether any of the orders prayed should issue.
 - (d) Who pays the costs.
6. That having considered the grounds on the notice of Motion, statements of facts, affidavit evidence and written submissions filed herein the Court find as follows:
 - (a) That in accordance with Section 26 of the Land Registration Act No.3 of 2012, the certificate of title is to be held as conclusive evidence of proprietorship subject to the encumbrances contained or endorsed on it. The title of the proprietor shall not be subject to challenge except on ground of fraud, misrepresentation or where the title was acquired illegally, unprocedurally or through corrupt scheme.
 - (b) That the letters of award attached to verifying affidavit in respect of Kisumu/Kasule/3794 and 4487 dated 11th July 2012 were addressed to Stephen Okello Okumu while that for parcel Kisumu/Kasule/4488 of the same date is blank on the space of the addressee.
 - (c) That the two letters of award annexed to the replying affidavit in respect of parcels Kisaumu/Kasule/4487 and 4488 dated 15th February 2011 are addressed to Stephen Okello Okumu.
 - (d) That the payments in all the letters of awards referred to in (b) and (c) above were to be made to the commissioner of Land. There is no indication that the payments in respect of the three suit lands has been released to Stephen Okello Okumu or any other person, and the court concludes that the rightful owner of the suit lands is at liberty to seek for its release from the Commission of Lands and or the National Land Commission. The Exparte Applicant has not availed any evidence to suggest that it had requested for the payments to be released and that the request has been declined.
 - (e) That the acquisition having been gazatted on 23rd July 2010 and letters of award issued on 15th February 2011 shows that the process was done and completed unde elements is the release of the payment which on its own is not sufficient basis on which the whole process can be faulted. The notice for inquiries was the forum where " every person who is interested in the affected land is required to deliver " "..... a written claim to Compensation." The Exparte Applicant as the registered proprietors of the three suit land do not seem to have taken the opportunity to appear for inquiries with copies of the required documents to lodge their claim for compensation." The Exparte Applicant can still lodge their claim for the payment with the 2nd Respondent or the National Land Commission, as there is nothing on record to suggest that the compensation money has been released.
7. That for reasons set out above and remembering that Judicial review proceedings are concerned with procedures rather than the merit of decisions by Public bodies, the court finds that the Notice of Motion dated 23rd April 2013 has no merit and is dismissed with costs.

S.M. KIBUNJA

ENVIRONMENT & LAND - JUDGE

28/10/2015

Dated and delivered this 28th day of October 2015

In presence of

Exparte Applicants N/A

Respondents N/A

Counsel Mr Indimuli for Mr Nyamweya for Applicants.

S.M. KIBUNJA

ENVIRONMENT & LAND - JUDGE

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28/10/2015

S.M. Kibunja

Court clerk Oyugi

Parties absent

Mr Indimuli for Nyamweya for Applicants

Court: Judgment dated and delivered in open court in presence of Indimuli for Nyamweya for Applicant.

S.M KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/10/2015

Mr Indimuli: I seek leave to appeal.

S.M KIBUNJA

ENVIRONMENT & LAND – JUDGE

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Court: Leave to appeal granted.

S.M KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/10/2015