



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC CASE NO. 3 OF 2019

SAMUEL G. WANJOHI.....1ST PLAINTIFF
PHYLLIS J. KISABEL.....2ND PLAINTIFF
ALICE WAIRIMU NJIHIA.....3RD PLAINTIFF
EMILY MORAA.....4TH PLAINTIFF
KIBET KIBIL.....5TH PLAINTIFF
WYCLIFFE LISA LITSA.....6TH PLAINTIFF
CATHERINE MURITHII.....7TH PLAINTIFF
JOSEPHINE N. MACKENZIE.....8TH PLAINTIFF
MARY YATICH.....9TH PLAINTIFF
BEATRICE NJERI MUCHIRI.....10TH PLAINTIFF
NORAH KEMUNTO.....11TH PLAINTIFF

VERSUS

KENYA ELECTRICITY

TRANSMISSION COMPANY LIMITED.....DEFENDANT

RULING

What is before Court for determination is the Defendant's Counsel's Oral Objection made on 16th March, 2022 objecting to the production of a Valuation Report from the National Land Commission in respect to land parcel number Mavoko/ Mun. Block 39/(AFYA)/82 Mavoko Municipality belonging to Phyllis J. Kisabei, the 2nd Plaintiff herein. The Defendant contended that the 2nd Plaintiff could not produce the said document which emanated from an expert as she was not its maker, and neither was it addressed to her.

The 2nd Plaintiff's Counsel in response insisted they were producing the said Valuation Report to confirm they received it. He explained that the said Valuation Report had been sought by the Defendant from the National Land Commission and it is the Defendant that gave it to the 2nd Plaintiff. He reiterated that, in the contents of the said Valuation Report, it refers to the 2nd Plaintiff and confirms she is the owner of the suit land as indicated therein.

The Defendant's Counsel in rebuttal insisted the Valuation Report could not be produced as the 2nd Plaintiff had not explained how she received it. Further, that he had the right to cross examine the expert over it.

I note this matter had proceeded for pre trial directions on 20th November, 2019 where the Defendant never raised any objection in respect to

the production of the said Valuation Report from the National Land Commission. Further, on perusal of the Plaintiff, I note the land indicated in the Valuation Report is indeed the 2nd Plaintiff's parcel of land and one of the properties in dispute in respect to compensation, after the Defendant had compulsorily acquired a wayleave over them. I have had a chance to peruse the Valuation Report and I note it was received by the Defendant in June 2018 as indicated in the Stamp on the face of it. Further, it makes reference to instructions from the Defendant, to the National Land Commission as contained in a letter dated the 22nd May, 2018 in respect to establishing the statutory compensation of the way leave corridor. I note the Plaintiff filed the Letter dated 22nd May, 2018 which the Defendant addressed to National Land Commission that culminated in the preparation of the disputed report. On a keen perusal of the said letter, I note it was written by the Defendant's General Manager, Technical Services, and it made reference to the 2nd Plaintiff including her parcel of land and sought for National Land Commission's professional opinion on compensation which is the issue in dispute herein. It is my considered view that the Defendant's Counsel's objection to the production of the Valuation Report offends the provisions of Section 35 of the Evidence Act and Order 11 of the Civil Procedure Rules. In the circumstance, I find that the impugned valuation report is very relevant to the dispute herein as the Defendant had actually been engaging with the Plaintiffs' in respect to compensation over their land and will decline to uphold the objection.

I direct that the Valuation Report from the National Land Commission in respect to land parcel Mavoko/ Mun. Block 39/(AFYA)/82 Mavoko Municipality belonging to Phyllis J. Kisabei, the 2nd Plaintiff herein be produced as an exhibit in this matter.

DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 21ST DAY OF APRIL, 2022

CHRISTINE OCHIENG

JUDGE