



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Case 617 of 2012

AFRISON EXPORT LIMITED.....1ST PLAINTIFF

HUELANDS LIMITED2ND PLAINTIFF

VERSUS

**CONTINENTAL CREDIT FINANCE LIMITED (IN
LIQUIDATION).....1ST DEFENDANT**

**OFFICIAL RECEIVER & INTERIM
LIQUIDATOR.....2ND DEFENDANT**

**THE HON. ATTORNEY GENERAL (SUED ON BEHALF OF THE OFFICE OF THE
PRESIDENT).....3RD DEFENDANT**

AND

**IN THE MATTER OF VALUATION OF LAND (DEED PLAN L.R. NO 7879/24) AND SALE
THEREOF TO THE OFFICE OF THE PRESIDENT OF THE REPUBLIC OF KENYA**

AND

**IN THE MATTER OF VENDORS CLAIM FOR THE SALE PRICE AND ASSESSED RENTAL
LOSS/LOSS OF USE ARISING OUT OF ILLEGAL OCCUPATION OF DEED PLAN L.R. NO.
7879/24 BY THE OFFICE OF THE PRESIDENT SINCE SEPTEMBER, 1988**

J U D G M E N T

1. The Plaintiffs, Afrison Export & Import Limited and Huelands Limited, are the registered proprietors of all that parcel of land known as LR No. 7879/24 (hereinafter “the suit property”). From the evidence

on record, the suit property was part of a larger property LR No. 7879/4 which the Plaintiffs purchased from one Joreth Limited in 1981. The suit property measures an area equivalent to 37.4 acres. This is well captured by the report prepared by the Ministry of Lands, Survey Department and dated 17th December, 2012 by one Wilfred Muchai, a Land Surveyor.

2. It would seem that in or about 1988, the Government of Kenya took possession of the suit property for and on behalf of the General Service Unit (“GSU”) of the Police Service. The Plaintiffs as the registered owners of the suit property have never been compensated for the loss of use of the suit property.

3. On 24th September, 2012, the Plaintiffs took out an Originating summons against Continental Credit Finance Ltd, the Official Receiver and Interim Liquidator of Continental Credit and the Attorney General on behalf of the Office of the President seeking various prayers for determination. These were to the effect that, Judgment be entered for the Plaintiffs against the 3rd Defendant for Kshs.6,450,000,000/- being the value of the suit property and Kshs.1,670,270,000/- as the rental loss or loss of use of the suit property. The suit as against the 1st and 2nd Defendant seem to have been withdrawn on 24th January, 2012 by a Notice of withdrawal filed on that date. The suit therefore proceeded as against the 3rd Defendant only.

4. By a consent order entered on 5th February, 2013, this court was to enter judgment on the evidence and mean average of valuations on record. Having carefully examined and considered the evidence on record, it is clear that the Plaintiffs are the legal and registered owners of the suit property. The 3rd Defendant has been in occupation of the suit property since 1988 and continue to occupy the same. It is clear that by that occupation, the Plaintiffs have lost the use of the suit property for the period 1988 to date. From the record, it is also crystal clear that the 3rd Defendant has not and cannot legally contest the Plaintiffs claim for compensation.

5. This is so because, in his Replying Affidavit sworn on 5th February, 2014, Victor G. Okioma, a Secretary in the Office of the President has deponed that in or about October, 2011, the then Minister for Provincial Administration and Internal Security had appointed an inter Ministerial Task Force to inquire in the issue of the delayed acquisition of the suit property, that those represented into that task force were the Ministry of Lands, the Kenya Police, the City Council of Nairobi, the Attorney General, the Public Procurement Oversight Authority, the Office of the President among others. He further deponed that that committee recommended that all suits relating to the suit property be withdrawn, that the Government does pay compensation for 19.5 acres since it had allegedly purchased a portion of 17.8 acres in 1988 for Kshs.64million from the Kenya Ports and Telecommunications Corporation (“KPTC”), and that the negotiation between the Government and the registered owners of the suit property be guided by valuations and survey reports. Further, this matter was the subject of a meeting of the Parliamentary Departmental Committee on Administration and National Security held on 2nd April, 2012. In that meeting, the committee made a similar recommendation that the government does purchase the suit property (19.7 acres) on the basis of the private open market value and do compensate the owners for the rental lost for the 23 years which the government had been in occupation thereof. These are contained in the minutes of the committee dated 18th April, 2012 and signed by the then Chairman of that Committee Hon. Fred Kapondi.

6. Further, from both the Supporting and Further Affidavits of Francis Mburu, it is clear that the issue of the liability of the 3rd Defendant to the Plaintiffs does not arise. The government had agreed as to having wrongly occupied the suit property and the only issue is the amount of compensation payable. Before I delve into the issue of compensation, there are two issues which I need first to dispose off. These are, whether the compensation would be for the property measuring 19.7 acres as contended by the 3rd Defendant or 37.4 acres as contended by the Plaintiffs and whether the Plaintiffs are entitled to the market rental loss for the period the government has been in occupation, that is Kshs.1,670,270,000/- claimed by the Plaintiffs.

7. On the issue of whether the compensation would be on 19.7 acres or 37.4 acres, it is clear from the

record that the government appropriated the entire area of the suit property, that is 37.4 acres. From the Replying Affidavit of Victor G. Okioma and the minutes of the Parliamentary Departmental Committee on Administration and National Security, the Government is of the view that it had already purchased 17.8 acres of the suit property from the defunct Kenya Posts and Telecommunications Corporation in 1988. I have seen the subject Sale Agreement. The same is dated 18th August, 1988. It was between KPTC and the Permanent Secretary, the Office of the President. It was for the sale of various sub-plots (between LR Nos.13421/257 and 13421/531). The purchase price was Ksh.64m. Looking at that agreement, the same does not state that the Kenya Posts and Telecommunications Co-operation was the registered owner of those sub-plots. It also does not give the total area being sold. It is also not clear from the record how Kenya Posts and Telecommunications Corporations assumed ownership to purport to sell the said property. There being no evidence of Kenya Posts and Telecommunication's Corporation's ownership of that property, I hold that Kenya Posts and Telecommunications Corporation could not have passed and did not pass on to the 3rd Defendant any title. Accordingly, I hold that the property the subject of the suit is the entire 37.4 acres comprised in the title for the suit property i.e. LR No.7879/24 and the compensation sought shall be on that entire property.

8. The other issue is whether the Plaintiffs should recover a sum of Kshs.1,670,270,000/- as open market rental loss for the period the 3rd Defendant has been in occupation of the suit property. Firstly, I note that there was no evidence on how the Plaintiffs arrived at this value. It is true that the government, through the Parliamentary Departmental Committee on Administration and National Security had agreed to compensate the Plaintiffs on this head. However, this court has considered the fact that this is a claim against the public and for the reason that the court was not told how the figure of Kshs.1,670,270,000/- was arrived at, I am afraid the claim is unsustainable. I decline to grant it.

9. That leaves me with the issue of what is the reasonable compensation for the suit property. On record were three (3) valuation reports. These were by:-

(a) Camp Valuers dated 11th May, 2012 for Kshs.6,450,000,000/-

(b) Clayton Valuers Ltd dated 30th November, 2012 for Kshs.3,109,500,000/-

(c) Llyod Masika Ltd dated 22nd January, 2013 for Kshs.2,700,550,000/-.

I have carefully examined the said valuation reports. They seem to have considered all the relevant material in arriving at the Valuations given. Although, there seems to be a marked disparity between the valuation report of Camp Valuers and the other two, that valuation however seems to be more detailed. In this regard, I agree with the parties that in order to come to a more plausible, fair, equitable and just value of the suit property, the mean value of the three valuations should be considered. This I do as follows:-

(1) Camp Valuers -Kshs.6,450,000,000/-

(2) Clayton Valuers -Kshs.3,109,500,000/-

(3) Llyod Masika -Kshs.2,700,550,000/-

Kshs.12,260,050,000/-

The mean of Kshs.12,260,050,000/- is Kshs.4,086,683,330/- which I will consider to be the fair value of the suit property. Accordingly, I enter Judgment for the Plaintiffs against the 3rd Defendant for the said sum of Kshs.4,086,683,330/-. I also award the costs of the suit to the Plaintiffs.

It is so decreed.

DATED and DELIVERED at Nairobi this 12th day of February, 2012.

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A. MABEYA
JUDGE